JAMES BAY AND NORTHERN QUEBEC AGREEMENT IMPLEMENTATION REVIEW

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The Minister of Indian Affairs
and Northern Development

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1. INTRODUCTION

The Grand Council of the Crees (of Quebec) ("the Crees") and the Makivik Corporation ("the Inuit"), which represent respectively the Cree and Inuit signatories to the James Bay and Northern Quebec Agreement ("the Agreement") have over the past two years made various public statements alleging that Canada and Quebec have not fulfilled their legal and moral responsibilities with respect to the implementation of the Agreement and the James Bay and Northern Quebec Native Claims Settlement Act.

The Crees and Inuit allege that as a result of the failure by Canada and Quebec to live up to their obligations under the Agreement the native people of James Bay and Northern Quebec have not enjoyed the degree of social, economic and material progress which they felt would be the natural outcome of the Agreement. The purpose of this paper is to report on the findings of a review made into Canada's performance in implementing its obligations pursuant to the Agreement.

Cabinet will be considering recommendations, based on the findings outlined in this Report, aimed at ensuring that Canada fulfills, in spirit and letter, all the obligations it assumed pursuant to, and in conjunction with, the Agreement.

2. BACKGROUND

On March 26, 1981 the Crees and Inuit appeared before the House of Commons Standing Committee on Indian Affairs and Northern Development. For over eight hours the Standing Committee heard briefs from the native parties and questioned them concerning their grievances. The chief representative of the Inuit was Mr. Charlie Watt, President of Makivik Corporation and the Crees were represented by Grand Chief Billy Diamond of the Grand Council of the Crees (of Quebec).

As a result of the hearings the Standing Committee took the extraordinary step of drafting a special Statement to the Ministers of Indian Affairs and National Health and Welfare in which they endorsed the claim of the native parties that Canada and Quebec had failed to implement major provisions of the Agreement. The Statement was presented by representatives of the Standing Committee to the Honourable John C. Munro, Minister of Indian Affairs and Northern Development, on March 31, 1981.

In response to the representations made by the Crees and Inuit Mr. Munro announced in the House of Commons the same day that he had discussed the matter with the Honourable Jean Chretien, Minister of Justice and Minister of State for Social Development, and that they had agreed to conduct a joint review of the implementation of the Agreement.

The general terms of reference for the review were:

a) to determine if Canada has fulfilled, in spirit and letter the obligations which it assumed pursuant to the James Bay and Northern Quebec Agreement (as amended), the James Bay and Northern Quebec Native Claims Settlement Act (1977, 25-26 Elizabeth II, C.32), the November 15, 1974 Federal letters of undertaking, the follow-up Federal letters of November 11, 1975, and all other relevant statutes, agreements and undertakings;

b) to review Canada's performance in implementing its obligations under the Agreement with regard both to the implementation of specific responsibilities and the management and coordination of Canada's overall implementation responsibilities;

c) to make recommendations, as necessary, for actions to remedy any shortcomings in the implementation of specific obligations as well as the overall implementation process.

This Report contains findings in respect of points a) and b). Point c) will be the subject of a Memorandum to Cabinet which will be based on the findings outlined below. The Report does not deal with the responsibilities or actions of the Crees, the Inuit, Quebec or the other parties, except insofar as they relate to Canada's performance.

One of the primary objectives of the review process is to lay the groundwork of understanding necessary to allow the Agreement to evolve and develop as it was intended. Problems of implementation and differences of opinion will continue but, with the proper understanding of the nature of the Agreement, positive attitudes on behalf of all parties, and concentration of efforts to resolve problems in discussions among the parties rather than in confrontation, it will be possible to solve these problems with much less acrimony.

The review focused on the specific allegations raised by the native parties in their presentations to the Standing Committee as well as in direct representations to the

Minister of Indian Affairs and the Minister of National Health and Welfare. Consideration was also given to testimony given by the Crees before a meeting of the Standing Committee on Health, Welfare & Social Affairs which was held on May 19, 1981. Specific allegations made with regard to responsibilities falling within Quebec's jurisdiction were not examined except insofar as these relate to certain matters of joint jurisdiction and the overall coordination of the implementation process.

The review was conducted by a team consisting of officials in the Corporate Policy Group and the Indian and Inuit Affairs Program of the Department of Indian Affairs and Northern Development (DIAND) and from the Department of Justice. The review involved: a detailed study of the Cree and Inuit briefs; a review of DIAND files and those of other relevant Departments; interviews with individuals involved in the negotiation and implementation of the Agreement; a review of relevant Department of Justice opinions; and extensive discussions with Cree and Inuit representatives.

In conjunction with the review Mr. Munro, his Parliamentary Secretary, Mr. Ray Chenier M.P., and senior DIAND officials, including Mr. Paul M. Tellier, Deputy Minister, visited several of the Cree and Inuit communities to see the problems of the Cree and Inuit first hand and to discuss possible solutions.

The major Federal responsibility for implementing the Agreement rests with DIAND but there are several other Departments which have or have had specific responsibilities pursuant to the Agreement, including: National Health and Welfare (NH&W), Transport Canada (TC), and the Canadian Employment and Immigration Commision (CEIC), and Environment Canada. Federal Departments with responsibilities pursuant to the Agreement participated in the review by reviewing their specific areas of responsibility and their conclusions are reflected in this Report.

In mid August and December the Crees and Inuit were given draft copies of this Report. During the fall and winter DIAND officials met with representatives of the native parties to discuss their comments on the Report as well as identify possible solutions to the problems. Approximately twenty-five meetings were held with the Crees and Inuit and their advisors. The draft Report was revised, taking into account the comments of the native parties.

Copies of the draft Report were also given to representatives of the Federal Departments noted above and various officers of DIAND. Comments received on the draft Report were incorporated in the final version when appropriate.

As will be noted in the Report, the James Bay Crees have launched legal proceedings against both Canada and Quebec regarding the implementation of Section 14 of the Agreement, which deals with the Cree health services regime, and other related matters. It should be clearly understood that the review was conducted without prejudice to those proceedings and that this condition was understood and accepted by the Crees and their legal counsel when they undertook to enter into discussions on the findings of the review as set out in this Report.

3. GENERAL OVERVIEW OF THE AGREEMENT

3.1 Provisions of the Agreement

The James Bay and Northern Quebec Agreement is Canada's first, and to this date only, major modern land claim settlement which has been finalized. The Agreement is an extremely complex document, which details a unique scheme for the social, cultural, economic and environmental management and development of the James Bay and Northern Quebec Territory (the Territory). The Agreement provides for several dozen committees, municipal corporations, authorities, boards, and other legal entities through which it was intended the native people would gain meaningful control over their affairs.

From the perspective of the native parties the main aim of the Agreement was to give them the means through which they could ensure their cultural vitality and preserve their traditional way of life while taking advantage of the economic opportunities and benefits arising out of the development of Quebec's northern territories.

The Agreement, signed November 11, 1975, is between the Government of Québec, the Société d'énergie de la Baie James, the Société de développement de la Baie James, the Commission hydroélectrique de Québec (Hydro-Québec) and the Northern Québec Inuit Association, the Grand Council of the Crees (of Québec) and the Government of Canada. The Agreement provides the native parties with: specified land rights; hunting, fishing and trapping rights; hydro development project modifications and remedial measures; future development and environmental considerations; provision for local and regional government authority; establishment of native controlled health and education authorities; measures relating to policing and administration of justice; continuing federal and provincial benefits; and native development and economic measures.

Cash compensation of approximately $232.5 million divided proportionally between the Crees and Inuit and paid out over a maximum period of 21 years is provided for in the Agreement. Canada's share of the compensation payments is $32.75 million.

In consideration of the rights and benefits set out in the Agreement the native parties agreed to "...cede, release, surrender and convey all their Native claims, rights, titles and interests..." (Section 2.1) to the 400,000 square mile Territory.

The Agreement, which was necessary to permit Quebec to construct the James Bay Hydro Electric Development Project, resulted in approximately 4,386 Inuit and 6,650 Cree people, living in 15 Inuit and 8 Cree communities, being registered as beneficiaries entitled to all the rights and benefits provided in the Agreement. The Agreement was approved, given effect and declared valid by the Parliament of Canada and the National Assembly of Quebec. The ratifying Federal legislation, the James Bay and Northern Quebec Native Claims Settlement Act, was passed by the House of Commons, after lengthy debate and negotiation, on May 4, 1977 and proclaimed on October 31, 1977.

In conjunction with the signing of the James Bay Agreement in Principle on November 15, 1974, letters of undertaking signed, on behalf of Canada, by the then Minister of Indian Affairs, the Honourable Judd Buchanan, were delivered to the Cree and Inuit leaders. These letters of undertaking set out agreements reached between Canada and the native parties with regard to matters, such as airstrip construction, which, although relating to the Agreement, were of primary concern only to Canada and the native parties. These letters are not part of the Agreement. They were, however, negotiated word by word by the negotiators for Canada and the native parties and they are a statement of the undertakings Canada agreed to carry out.

Mr. Buchanan also sent letters to the native leaders in conjunction with the signing of the Final Agreement on November 11, 1975. These letters were necessary, in the opinion of Federal negotiators, to clarify some of the matters raised in the 1974 letters in light of the negotiations which were carried on in the intervening year, and the provisions of the Final Agreement. The 1975 letters were not negotiated and represent only Canada's views rather than an understanding reached between Canada and the native parties.

3.2 The process of negotiation

The Agreement was negotiated under very severe time constraints resulting from the Quebec position that the Hydro-Electric Project had to go forward on an urgent basis, and from the resulting Cree position that they would resume their court action to stop the project if a final agreement was not reached within one year of the signing of the Agreement in Principle on November 15, 1974. The contentiousness of the issues and the opposing positions of the parties were such that some of the most important provisions of the Agreement were only finalized during almost non-stop negotiating sessions during the last two weeks preceding the signing of the Final Agreement on November 11, 1975.

The Agreement was negotiated on the basis of an Agreement in Principle which was signed on November 15, 1974. The Agreement in Principle was in effect an agreement to negotiate an operative agreement.

The pressure under which the Agreement was negotiated, the inherent complexity of its provisions, and the fact that negotiating is by its nature a process of compromise, resulted in a document with many provisions which are vague, ambiguous and open to widely varying interpretations. It was generally understood during the negotiations that the precise details of the various programs, rights and benefits would be worked out over a lengthy process of implementation which would be carried out through the various entities established pursuant to the Agreement and through ongoing discussions involving all parties to the Agreement.

In considering Canada's role in the negotiation and implementation of the Agreement, it is important to keep in proper perspective the role that Canada had in the settlement of the Cree and Inuit land claim. Under the terms of the Quebec Boundaries Extension Act (1912, 2 George V. C45), the Government of Quebec was given primary responsibility for settling the question of aboriginal title in its new northern territories. Quebec took no action to fulfill this responsibility until it was forced to begin negotiations as a result of the 1973 legal proceedings launched by the Crees and Inuit. The native parties argued in court that the Quebec sponsored James Bay Hydro-Electric Project be halted because the land on which it was being constructed belonged to the Crees and Inuit by virtue of their aboriginal occupation of it. Canada had partial responsibility for compensating the natives for the extinguishment of title, as is reflected in Canada's contribution to the compensation payments. Canada also had the exclusive constitutional authority to pass legislation extinguishing native rights, title and interests. The Federal Government's main involvement however resulted from its historic and constitutional "special responsibility" regarding "Indians and lands reserved for Indians" pursuant to which essential services and programs had been provided to the native people of James Bay and Northern Quebec for many years.

Quebec made significant political and economic gains as a result of the Agreement. The Agreement enabled Quebec to proceed with a multi-billion dollar hydro development scheme which will have long lasting economic benefits. Canada's main purpose for participating in the negotiations was to fulfill its constitutional obligations respecting the Territory and its native inhabitants.

3.3 Agreement Implementation

All parties agree that, in several areas of the Agreement, implementation has taken place and the native people are enjoying the benefits which they negotiated. Both Quebec and Canada have passed or are actively considering legislation and regulations which recognize, protect, and enhance the various rights and benefits accruing under the Agreement. Compensation funds have, with one exception, been paid on schedule and the native corporations established to manage these funds are using them for the general benefit and welfare of the native people.

In the early years of the Agreement the process of implementation was relatively smooth. However, more recently, major disputes have arisen, culminating in the allegations made by the native parties before the Standing Committee and the subsequent decision to review Canada's role in implementing the Agreement.

This Report does not focus on the acknowledged areas of compliance with the terms of the Agreement, but rather on the areas where the native parties contend there have been significant problems. The Crees and Inuit have indicated that they still believe in the basic soundness of the Agreement. In their judgement the current difficulties are a result of the failure of Canada and Quebec to properly fulfill their obligations. The Crees emphasized this point in their brief to the Standing Committee on Indian Affairs.

> "While the Agreement was and is a good agreement in its terms, the implementation of important parts of the Agreement has been a failure. Although it cannot be denied that other parts of the Agreement have been successfully implemented, the disputes and tensions caused by the parts which are not working are threatening the remainder of the Agreement." (Underlining in the original).

The Inuit maintain that the failure of Canada and Quebec to properly implement the Agreement stems from underlying negative attitudes, some of which they cite in their brief:

> "a) a prevailing distrust of Inuit intentions on any given point;
>
> b) residual negative feeling on the part of some government functionaries stemming from the negotiation process leading to the signing of the Agreement;
>
> c) the attitude that when the Agreement is silent on even the most minor of points, it was meant to be limitative of the native peoples' rights and that, in any event, the Crees and Inuit received too much; and
>
> d) the attitude that where obligations cannot be met within the framework of existing programs, no new programs will be created and funded."

In discussing their expectations of Canada, both native parties place particular emphasis on Canada's "special responsibility" for the Crees and Inuit which is specifically noted in the preamble to the James Bay and Northern Quebec Native Claims Settlement Act:

> "Parliament and the Government of Canada recognize and affirm a special responsibility for the said Cree and Inuit".

The review team discovered several significant areas of implementation with regard to which there have been serious problems of implementation, unresolved disputes, and in some cases a failure to fully implement the Agreement in both its spirit and letter. These problems of implementing the Agreement cannot be attributed to any one party to the Agreement. The discussion below, however, focuses primarily on Canada's role in the implementation process.

4. FACTORS RELATING TO THE SPECIFIC GRIEVANCES

There are several general factors relating to the implementation of the Agreement which are important to note before examining the specific grievances raised by the Crees and Inuit.

4.1 Wording and Interpretation of the Agreement

In the opinion of Department of Justice officials, Canada has not committed any legal breaches of the Agreement.

While in our view Canada has not breached the Agreement as a matter of law, given Canada's special responsibilities for the Cree and the Inuit of Northern Quebec and the importance to them of the James Bay and Northern Quebec Agreement, the matter does not end there.

Indeed, many of the key obligations assumed by Canada are worded in such a way as to give Canada wide discretion in fulfilling them. The determination of when and how commitments are fulfilled and the level of funding are, in the context of the agreement, usually matters of public policy and not law. The fair test of Canada's performance can, therefore, not be solely as to whether the legal obligations have been met: this review focuses not only the letter of the Agreement but on its spirit as well.

A brief explanation of some of the problems concerning the language of the Agreement and the nature of the obligations assumed will be useful in understanding some of the difficulties that have arisen in the implementation process.

Many important provisions of the Agreement are not specific enough to commit Canada to specific levels of service or funding, or to commit the government to achieve goals by a defined date. Some of these provisions indicate that services and funding should be in line with those available to other Canadians, Inuit or Indians and that obligations should be achieved within the limits of funding authority approved by Parliament. These provisions are often difficult to interpret in terms of the monetary expenditure and/or the quality and quantity of services and/or capital goods required to fulfill them.

Where the letter of the Agreement is clear, Canada has met its commitments or is in the process of doing so. It is in areas where subjective factors, such as the "spirit" of the Agreement, are important that most problems have arisen.

This Report attempts to analyze these problems in general terms, without detailed analysis of precise dollar figures and without drawing any conclusions as to precisely what can and should be done to rectify problems. The reason is that problems in living up to the spirit of the Agreement, once identified as such, can only be solved by the parties acting together to realize that spirit. Discussions on details there must be, but they should be undertaken jointly by those parties concerned with the success of the Agreement.

The general problem of interpreting the Agreement is illustrated by the dilemma faced by the review team in trying to reach a consensus on the meaning of Sections 28.1.1 and 28.1.2, which outline preliminary provisions with respect to Section 28: Economic and Social Development - Crees, as they relate to several very crucial sections that follow. Similar preliminary provisions, regarding Inuit economic development, Sections 29.0.2 and 29.0.3 pose the same problem of interpretation.

The review team spent many hours with the native parties and their legal counsel, Department of Justice officials and knowledgeable DIAND officials trying to interpret these sections as they are written in the Agreement. Most people involved in the negotiation of the wording felt strongly that they knew what it meant and that in their view the meaning was clear. Unfortunately, their interpretations varied. The key elements of this issue are discussed below.

Sections 28.1.1 and 28.1.2 read as follows:

28.1.1 "Programs, funding and technical assistance presently provided by Canada and Québec, and the obligations of the said governments with respect to such programs and funding shall continue to apply to the James Bay Crees on the same basis as to other Indians of Canada in the case of federal programs, and to other Indians in Québec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs, and to general parliamentary approval of such programs and funding.

The foregoing terms, conditions, obligations and criteria will apply to all federal programs referred to in this Section."

28.1.2 "Subject to paragraph 28.1.1, Canada and Québec shall continue to assist and promote the efforts of the James Bay Crees and more specifically undertake, within the terms of such programs and services as are established and in operation from time to time, to assist the James Bay Crees in pursuing the objectives set forth herein in Sub-Sections 28.4 to 28.16.

Sections 28.4 to 28.16 referred to at the end of Section 28.1.2 set out provisions for a wide range of economic and social development initiatives such as: the establishment of Cree associations for Trapping, Outfitting, and Arts and Crafts; the provision of community services; Cree participation in employment and contracts; assistance to Cree entrepreneurs; and other similar provisions.

Sections 28.1.1 and 28.1.2 appear from a legal perspective to qualify the succeeding provisions of Section 28. Thus, according to one possible intepretation, although certain sections in 28 may appear to place specific and special obligations on

Canada, Canada's responsibility to carry out these special obligations is restricted by the extent to which these obligations can be fitted within the existing range of programs and services available to all Indians.

This interpretation is supported by the position of Canada's negotiators that "programs were not negotiable". The preliminary provisions of Section 28 were, according to the Federal negotiators, specifically included to protect the Crees by making it clear that they would, in general, continue to benefit from the usual programs available to status Indians, and to make it clear that all the provisions of Section 28 would have to be fitted within existing programs and services. According to this view, the specific provisions of Section 28 were included only at the insistence of the Crees, and in order to illustrate their intended new ventures and to reflect the very special circumstances that would apply in relation to certain new ventures.

The review team found difficulty in reconciling this interpretation with the specific provisions of Section 28. For example, Section 28.11.1 dealing with community services, appears, subject to certain caveats, to commit Canada to fund specific facilities:

> 28.11.1 "Subject to the extent of financial participation possible by Canada, Québec and the Cree communities and to the priorities actually agreed to by the interested parties at the time annual budgets are discussed and prepared, Quebec and Canada shall provide funding and technical assistance for:
>
> a) the construction or provision of a community centre in each Cree community;
>
> b) essential sanitation services in each Cree community;
>
> c) fire protection including the training of Crees, the purchase of equipment and, when necessary, the construction of facilities in each Cree community.

If this section is qualified by the preliminary provisions (28.1.1 and 28.1.2) it becomes very difficult to understand to what this section actually entitles the Crees, particularly when one considers the preliminary clause limiting the obligation to the extent of possible funding. Government officials who were involved in the negotiations believe that it adds nothing to the Agreement.

On the basis of the research carried out by the review team it appears that in 1975, and since, there was and has been no "meeting of the minds" as to the meaning of these sections. Faced with the need to interpret the meaning of this section in practical terms the review team does not believe that it can simply be ignored. We have concluded that, although Sections like 28.11 may not contain precise legal commitments, they imply an intention by Canada to make its "best efforts" to assist in the accomplishment of the goals referred to in the Agreement.

4.2 The Dynamic Nature of the Agreement

The Agreement provides for a detailed framework within which, through ongoing interaction, the native parties and the other signatories can work towards the full implementation of all the social, economic and political rights and benefits provided in the Agreement. At the time the Agreement was signed it was clearly understood that the achievement of many important aspects of the Agreement would have to be worked out through a long term process of implementation.

The Agreement was designed to allow for the evolution of Inuit and Cree self-government and to allow for the adaptation of specific rights, benefits, and institutions to changing conditions and circumstances. The Agreement was not intended to be a fixed and static legal document but rather a flexible agreement which would allow problems to be worked out through ongoing interaction. The fact that many important aspects of the Agreement were left subject to ongoing negotiation complicated the implementation and interpretation of the Agreement and contributed to some of the specific problems discussed below.

4.3 Perception of Agreement Benefits

In reviewing the implementation of the Agreement, the review team became aware that some segments of the general public and the public service have concluded that the Crees and Inuit are now relatively well off and, therefore, do not require the same access to government funds and assistance made available to other native groups in the country. This perception of the Agreement benefits is not accurate and is in contrary to the underlying spirit and intent of the Agreement. The Agreement was not designed to solve all the problems of the Crees and Inuit, nor was it intended that the payment of compensation funds would be used as an excuse for reducing programs and services to which the native parties were entitled. The Agreement was intended as a foundation, or a minimum statement, of the rights and benefits to be enjoyed by the native parties. It was not intended that the Agreement be interpreted as a limitation on their rights and benefits. It is important to note that the review team found no evidence of this attitude among officials of DIAND's Quebec Region, who have responsibility for implementing major sections of the Agreement.

It should also be kept in mind, when considering the cash compensation received by the native parties, that the approximate $225 million due them will not be fully paid out until 1997. This extended payout period results in a considerable reduction in the real value of the compensation payments.

In 1977 the Federal Treasury Board estimated that after taking into account the impact of inflation and the real rate of social discount, which is a measure of the benefit of receiving a dollar today rather than at some later date, the real value of the compensation package, depending on the assumptions used, ranges between $86.8 million and $171.9 million in 1976 dollars. Thus, even if the most optimistic assumptions are used, the compensation funds will shrink in real terms by over 26% simply as a result of the prolonged payout period.

4.4 Expectations Arising From the Agreement

In 1975 both the native parties and the governments had high expectations for the successful implementation of the Agreement. This mood of confidence is clearly evident from the press reports at the time of the Agreement signing.

While the expectations of the parties must be taken into account in looking for the spirit of the Agreement, in some instances high expectations on the part of one party or another may have tended to obscure the actual provisions of the Agreement. It appears that some conflicts concerning implementation stem more from failed expectations than from actual breaches of obligations under the Agreement. In other instances, problems have arisen because parties to the Agreement, both native and governmental, have interpreted the Agreement to give them what they had been bargaining for rather than what was actually put into the Agreement through the normal process of compromise.

4.5 Federal Budgetary Restraint

Federal budgetary restraint over the past several years has played a major role in delaying or limiting the achievement of goals which, in 1975, it was generally assumed could be quickly accomplished. In general, the funding currently available for native orientated programs is inadequate to meet proven needs. This situation has tended to slow down development in many Indian communities, including those coming under the Agreement.

5. SPECIFIC GRIEVANCES

In order to facilitate discussion of the specific grievances raised by the native parties, they are divided in the Report into four categories:

a) problems relating to the provision of Federal programs, services, benefits and the overall pattern of Federal expenditures in the Territory (5.1.);

b) problems relating to the provision of "special" programs services and benefits, such as health services and social and economic development (5.2);

c) problems relating to the overall implementation of the Agreement (5.3); and

d) other related issues (5.4).

5.1. Federal Programs, Services and Benefits

A. Issue

The Crees and Inuit claim that Canada has violated the Agreement by failing to provide, eliminating, or reducing ongoing Federal programs, services and benefits which, pursuant to the Agreement and the Federal letters of undertaking, were to continue to apply to the native parties.

B. Provisions of the Agreement

Sections 2.11 and 2.12 of the Agreement state:

2.11 "Nothing contained in this Agreement shall prejudice the rights of the Native people as Canadian citizens of Québec, and they shall continue to be entitled to all of the rights and benefits of all other citizens as well as those resulting from the Indian Act (as applicable) and from any other legislation applicable to them from time to time.

2.12 "Federal and provincial programs and funding, and the obligations of the Federal and Provincial Governments, shall continue to apply to the James Bay Cree and the Inuit of Québec on the same basis as to the other Indians and Inuit of Canada in the case of federal programs, and of Québec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs.

This principle is reiterated in Section 3(3) of the James Bay and Northern Quebec Native Claims Settlement Act:

> "All native claims, rights, title and interests, whatever they may be, in and to the Territory, of all Indians and all Inuit wherever they may be, are hereby extinguished, but nothing in this Act prejudices the rights of such persons as Canadian citizens and they shall continue to be entitled to all of the rights and benefits of all other citizens as well as to those resulting from the Indian Act, where applicable, and from other legislation applicable to them from time to time."

Sections 6 and 7 of the Agreement in Principle (November 15, 1974) also make reference to ongoing programs:

6. "Citizens rights:

Nothing contained in the Final Agreement shall prejudice the rights of the Native people as Canadian citizens of Quebec, and

> they shall accordingly be entitled to all of the rights and benefits available to all other citizens, subject to the Indian Act (as applicable) and to any other legislation applicable to them.
>
> 7. Federal and Provincial Programs
>
> Federal and provincial programs and funding, and the obligations of the Federal and Provincial Governments, shall continue to apply to the James Bay Crees and the Inuit of Quebec on the same basis as to the other Indians and Inuit of Canada in the case of federal programs, and of Quebec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs."

Canada's responsibilities pursuant to Section 7 were the subject of part of the Federal letter of undertaking, November 15, 1974, which stated:

> "With respect to Clause 7 of the said Agreement in Principle, Canada undertakes, in particular, that programs and funding for education, housing and health, will continue to apply to the James Bay Crees and Inuit of Quebec without discrimination to the said Crees and Inuit because of any rights, benefits, or privileges arising from the Final Agreement, all of the foregoing subject to general Parliamentary approval of such programs and funding and the criteria established from time to time for the application of such programs."

C. Position of the Native Parties

In their brief to the Standing Committee the Crees argue that Canada has not respected its commitments pursuant to Sections 2.11 and 2.12. The Crees state:

> "... the funding, the services and the programs which the Crees would have received had the Agreement not been signed were supposed to continue after the Agreement and in addition the Crees were to receive the rights, benefits and privileges in their

> favour specified in the Agreement and in the Federal Undertakings, including the additional programs, services, resources and funding from the Governments mentioned specifically in the Agreement.
>
> This has not occurred."
>
> "Not only have the Crees not obtained additional benefits, services and programs or even the continuation of these, but there has been a consistent attempt on the part of the Federal Government to reduce programs already applicable to them, to give the benefit of such savings to the Department and to use whatever means available in order to force the Crees to use compensation funds." (Underlining in the original)

Mr. Charlie Watt put forward a similiar point of view in his oral testimony to the Standing Committee on March 26, 1981:

> "As the Inuit in the north of Quebec, we thought that we were going to get a benefit out of the Agreement when we signed it. We thought the promise of no cuts in programs would be respected, but the government has not put any substantial amount of financing in over the last seven years. If you compared our communities with the Northwest Territories - the level of services and the necessary needs that should be in the communities - the people would wonder whether we are in a different country. That is how bad our communities are right at the moment, and I believe this also applies to the Crees, not only to Inuit"

On the basis of a financial analysis they undertook, the Crees believe that Canada has realized a "saving" of $20.3 million as a result of the James Bay Agreement and this "saving" is growing by $8.5 million a year. The Crees attribute this "saving" to the following factors:

i) Replacement of Federal Programs with Provincial Programs. For example, the need for Federal welfare payments has been reduced as a result of the Quebec sponsored Income

Security Program for Trappers. The Cree estimated that this resulted in a "saving" in 1976/77 to 1980/81 of $6.3 million.

ii) Replacement of Federal programs with programs funded by Quebec with cost sharing agreements with the Federal Government. For example, Quebec assumed 25% of the cost of the Cree School Board and Canada 75%. Previously Canada paid 100% of education costs. This has resulted, the Crees say, in Canada saving $12.2 million since 1976-77.

iii) Removal of administrative burden and related expenses as a result of transfers of responsibilities. The Crees argue that Cree entities such as the CRA have assumed functions previously carried out by the DIAND. In their estimation this has resulted in a saving of $3.7 million to 1980/81.

Spokesmen for the Crees contend that the spirit, intent, and letter of the Agreement obligates Canada to re-allocate these "savings" to other "ongoing Cree programs and new areas of Cree responsibility". The Crees also argue that, even in areas where ongoing programs have continued, the Crees have received a reduced level of service and funding.

The Inuit contend that the principles enunciated in Sections 2.11 and 2.12 of the Agreement and Sections 6 and 7 of The Agreement in Principle, whereby they would have the benefits of the Agreement plus those under regular Federal programs, have been revised as a result of the restrictive interpretation Canada has given to Sections 29.0.2 and 29.0.3

D. Review of Issue

a. The nature of Canada's obligations

One of the underlying principles of the Agreement is that the native parties would not suffer any reduction in the level of overall services and benefits available to them as a result of the Agreement. The Agreement provides for certain agreed changes in the way rights and benefits are administered, including shifts of responsibility to Quebec, but it was intended that these changes would supplement and/or replace existing rights and benefits in such a way as to ensure, at the very least, that after the changes had been made the native people did not suffer a net reduction in their rights and benefits.

Sections 2.11 and 2.12 are a formal statement of this basic principle. These sections were intended to ensure that the Crees and Inuit would not be cut off from programs and services offered by Quebec and/or Canada simply because they signed the Agreement. The native parties feared that the governments might treat them as "rich Indians" or "rich Inuit" after they had received compensation payments and use the perceived or imagined improvement in their economic situation as an excuse to eliminate or reduce the programs and services available to them.

Canada's negotiators agree with this general interpretation but differ in one specific respect. Contrary to the contention of the native parties, Canada's negotiators maintain that it was clearly understood during the negotiations that the continuation of programs was subject to the provision of alternative programs in the Agreement: in other words there would be no duplication. Indeed this principle is an underlying thesis of all the special programs, such as health and education, outlined in the Agreement.

The Federal undertaking in the letter of November 15, 1974 (quoted above) to continue "... programs and funding for education, housing and health" was made prior to the negotiations of the Final Agreement. Those negotiations resulted in agreement to alter Canada's responsibilities regarding education and health by introducing alternative regimes to deal with those matters.

It was taken for granted during the negotiations, and seemed to be accepted by the native parties, that in areas such as education, the specific provisions of the Agreement would take precedence over, and replace, the general education program available to the native people. There was no intention to establish a dual system of programs delivery with the native people having a choice between "ongoing programs" and "special programs". In the opinion of the Federal negotiators, it was understood during negotiations that ongoing programs would apply where there were no special provisions, thus ensuring that the native people received the whole spectrum of services available to Indian and Inuit people plus the special rights, benefits and programs established under the Agreement. The creation of "special programs" was, however, not intended to exclude the native parties from access to particular programs, which might, from time to time, be offered by DIAND or other Federal agencies, if a similar program was not offered within the "special program" as established by the Agreement.

b. Federal expenditure patterns

Appendix #1 (attached) documents Federal expenditures in the James Bay and Northern Quebec Territory over the past 5 years (1975/76-1980/81). The Appendix covers ongoing programs as well as special programs directly relating to the Agreement. Over the 5 year period Federal expenditures totalled approximately $155 million.

In order to appreciate the relative magnitude of Canada's program funding responsibilities, it is important to note that this sum is 4 times as great as Canada's share of the total compensation payments, and approximately equivalent to the total sum of compensation payments made to date by Canada and Quebec.

The Agreement has resulted in a major reorganization of administrative and budgetary responsibility for programs delivered to the Inuit and Cree people. Quebec has assumed major budgetary responsibilities with regard to education, health, income security, and Inuit local government. Native run organizations have assumed responsibility for most aspects of program administration and local government previously carried out by DIAND and other government agencies.

The reorganization of the program delivery and administrative systems has necessarily resulted in a change in the pattern and magnitude of Canada's expenditures with regard to the Cree and Inuit communities. In some instances, for example, health and Inuit municipal services, these changes have resulted in budgetary "savings" while in other areas current expenditures clearly exceed what would be the case had the Agreement not come into effect.

For example, despite the fact that Canada now pays only 25% of Inuit education costs and 75% of Cree costs, Canada's overall expenditure on Cree and Inuit education has increased much more rapidly than would have been the case had earlier expenditure patterns been projected into the future.

Moreover the Agreement does not provide, nor was it intended, that expenditure "savings" resulting from the Agreement were to be redirected to other Cree and Inuit programs. It was realized at the time the Agreement was being negotiated that the transfer of program and administrative responsibility would, in certain circumstances, result in a relative reduction of Federal expenditures.

The massive changes in the administration, funding and nature of programs being delivered to the Crees and Inuit make it very difficult to make meaningful comparisons between Federal spending patterns in the pre-Agreement and post-Agreement periods and to calculate the net impact of such changes on Canada expenditures regarding the Crees and Inuit.

Officials of DIAND's Quebec Region are, however, unequivocal in stating that applicable ongoing programs have continued to be available to the Cree and Inuit on exactly the same basis as they are applied to other eligible groups, except insofar as modifications were necessary as a direct result of provisions in the Agreement. The review team has not seen any evidence to refute this position.

Aside from the technical difficulties in determining whether the Cree and Inuit have received their "fair share" of ongoing funding is the problem of determining what constitutes a "fair share". The Department allocates much of its funding on the basis of need rather than on some clearly objective criteria such as per capita allocations. If a certain group requests, for example, an increase in their housing allocation, that request must be assessed in light of the needs for housing in other communities, and all the needs have to be fitted within an admittedly inadequate budget. In allocating funds to the Cree and Inuit communities, Regional officials indicate that they have based their allocation on a fair evaluation of Cree and Inuit needs relative to other communities in the Region. We see no reason to question that statement.

It should be noted that, in virtue of Section 29.02, the Inuit argue that in their case the comparison should have been made relative to Inuit communities in Canada rather than communities in Quebec. While the review team well understands their position and concern about the conditions in their communities, relative to the conditions of the Inuit in the Northwest Territories, it is noted that the Section refers to the continuation of Federal programs. While the disparities between the Inuit are of concern and while studies should be made and necessary action taken, the solution is beyond the scope of this review.

Regarding the overall question of ongoing Federal programs, services, and benefits, one shortcoming appears to be a failure, on the part of Canada, to analyse the budgetary impact of the Agreement from a global perspective. The native parties expected that Canada would take into consideration changes in its administrative and funding responsibilities when considering the overall approach of Canada's involvement in the future development of the Cree and Inuit communities, and in dealing with specific requests for changes in programs and funding, and the transfer of person years.

This problem is, however, not unique to the Cree and Inuit communities. Recent DIAND studies indicate that similar problems have occurred with program and funding transfers elsewhere in the country. DIAND is currently examining ways of preventing such difficulties in the future.

It is impossible to determine whether such a global approach to the budgetary implications of the Agreement would have significantly altered the pattern of Federal expenditures during the post-Agreement period. It is, however, clear that the overall rationale of the Federal implementation process would have been on a firmer foundation had such an approach been adopted. The question of Canada's overall implementation procedure is discussed in Section 5.3.2 of this Report.

E. Comments/Summary

Canada's obligation to continue the provision of ongoing programs, services and funding may have been more effectively dealt with had it been considered as part of an overall implementation strategy. Nonetheless, it appears clear that Federal officials have been careful to ensure that the entitlements of the Crees and Inuit were respected.

This does not necessarily imply that the level of services and programs and their funding was necessarily optimal. The overall level of ongoing funding may be disappointing, but it reflects the needs of the Cree and Inuit communities relative to the needs of other Indian and Inuit communities in Quebec and Canada, and relative to the overall budgetary priorities decided upon by Parliament.

The next question is, therefore, whether the letter and spirit of the Agreement confers upon Canada "special" obligations, over and above the commitment to ongoing programs, and if so has Canada fulfilled any such obligations.

5.2 "Special" Programs, Services and Benefits

The native parties contend that the "special" Federal programs, services and benefits which were specified in the Agreement have been applied very narrowly and in a manner which has hampered or prevented the native parties from enjoying all the benefits to which they are entitled. The Inuit stressed this point in their brief to the Standing Committee:

> "Native peoples have yet to see the meaningful implementation of the majority of those measures. Canada's approach to these measures illustrates the magnitude of the problem. In the case of every measure, no matter how concrete or imperative the terms of Canada's obligations in this regard may have been stated, implementation has not taken place unless the measure fit squarely within the four corners of existing federal programs.
>
> In other words, in the absence of criteria established for the implementation of such measures through existing programs and in the absence of funds earmarked for such measures, Canada has taken the position that it has no obligation to create special programs or amend existing ones or to seek additional budgetary allocations."

The review team found evidence that there have been serious problems in implementing some of the special programs established under the Agreement. These problems are discussed in detail in the following sections of the Report.

5.2.1 Housing and Infrastructure

A. Issue

The Crees and Inuit maintain that the spirit and letter of the Agreement entitle them to special Federally funded "catch-up programs" to upgrade housing infrastructure in their communities.

B. Provisions of the Agreement

The Agreement and its related documents contain no provision which clearly commits Canada to undertake the type of comprehensive housing and infrastructure "catch-up" program envisaged by the native parties.

In respect of the Crees there are, however, obligations respecting specific localities and/or services. For example, pursuant to the Agreement, and several of the complementary Agreements signed since 1975, Canada undertook to construct housing and infrastructure in certain of the Cree communities. Also Section 28.11.1 (quoted above) makes reference to a general program for the construction of "essential sanitation services in each Cree community..." as well as programs for the construction of community centres and the provision of fire protection.

Canada's obligations with regard to Inuit housing and infrastructure are more general than those relating to the Crees. This may have been a result of the fact that the Agreement provided for Quebec, in conjunction with the Inuit regional and municipal governments, to eventually assume primary responsibilities for Inuit housing and infrastructure. Canada's obligation, as far as the Agreement goes, is to provide ongoing services until such time as a complete transfer is accomplished.

Section 29.0.40 reads:

> "The existing provision of housing, electricity, water, sanitation and related municipal services to Inuit shall continue, taking into account population trends, until a unified system, including the transfer of property and housing management to the municipalities, can be arranged between the Regional Government, the municipalities and Canada and Québec."

The specific provisions noted above are of course in addition to the general provisions of the Agreement, such as Sections 2.11 and 2.12 which provided that the Inuit and Cree communities remain eligible to receive all applicable ongoing programs provided by Canada and/or Quebec.

C. Position of the Native Parties

The Crees and Inuit contend that, at the time the Agreement was being negotiated, it was agreed by all parties that virtually all the native communities required a major program to upgrade housing and infrastructure facilities. The native parties argue that, as a result of the fact that aboriginal title in the Territory was in dispute and that the status of the lands on which the communities were situated was disputed, Canada did little to provide essential services in these communities, and funding by Canada was virtually frozen and in certain cases decreased in the 3-4 years immediately preceding the Agreement.

Representatives of the Crees and Inuit told the review team that, during the negotiations, it was impossible, because of time constraints, to determine specific housing and infrastructure requirements, or the amount of funds which would be required to provide the needed facilities. The difficulty in establishing precise needs made it virtually impossible to negotiate a specific program for upgrading the communities.

Moreover, the native parties argue that the government representatives, while they rejected the notion of providing for a "catch-up" program in the Agreement, assured them that the aims of such a program could be accomplished in a reasonable period of time through the application of "ongoing programs", to which the native people would continue to be entitled. Although they understood, and the Agreement specified, that such programs were to be applied on the same basis as "to other Indian and Inuit" and "subject to the criteria established from time to time for the application of such programs" the Cree and Inuit felt that, in view of the fact that the basic criteria for such programs was need, and their need was proven, they would be given priority consideration. Since at that time government programs and economic activity were expanding, it was assumed that the needs of the native communities could be accommodated within available government programming and funding, particularly insofar as The Agreement contemplated a "unified system" for the delivery of essential services, which would eliminate previously existing duplication between Federal and Quebec programs. The native parties cite Section 2.11, 2.12, 28.11.1 and 29.0.40 as indicative of the underlying commitments by both governments to solve their basic housing and infrastructure needs.

A major focus of the brief presented by the Crees is the critical role that the lack of proper sanitation has played in the health problems experienced by their people. They make special reference to the 1980 gastro-enteritis epidemic which resulted in the death of several native children and was caused, in part at least, by contaminated water supplies and inadequate sanitation. They argue that Section 28.11.1 guarantees them a special program for the construction of sanitation services and that this section was specifically included in the Agreement in recognition of the special obligations that Canada and Quebec were assuming.

The Crees are dissatisfied with the manner in which Canada has fulfilled its responsibilities pursuant to a five year housing and infrastructure agreement signed by DIAND and the Crees in May 1979. The Crees viewed that agreement as a "temporary measure to enable the [housing and infrastructure] program to be accelerated". The Crees claim that this goal has not been accomplished and that, in fact, the Crees have been forced to use their own funds to accelerate the program. They are not confident that they will be able to regain these funds from Canada. They have also expressed dissatisfaction with the way in which Canada has fulfilled its undertakings, pursuant to Mr. Buchanan's letter of November 15, 1974, concerning a water and sewage system in Eastmain and the relocation of Nemaska. The Crees considered these undertakings to be "special additional commitments" by Canada.

The Inuit perspective on the "catch-up" issue differs considerably from that of the Crees because the Inuit villages are now Quebec municipalities under Quebec jurisdiction and eligible for Quebec programs and funding. The Cree communities, on the other hand, are essentially similar to Indian reserves and come under Federal jurisdiction. The Inuit agreed to Quebec jurisdiction, but they contend that this was conditional on Quebec providing a level of programs and services, especially housing and infrastructure, geared to the proven needs of their communities. Such programs and services were to be provided, to as great an extent as possible, through the regional and local governments established pursuant to the Agreement.

The poor facilities in their communities are the Inuit argue the result of the failure of Canada to provide adequate funding for the Inuit communities during the time they were under direct Federal control, and especially during the mid 1970's while the Agreement was being negotiated. The Inuit contend that it was understood during the negotiations that the Inuit communities of Northern Quebec compared very unfavourably in terms of housing and essential facilities to similar Inuit communities in the Northwest Territories.

The Inuit object strongly to the Northern Quebec Transfer Agreement, signed February 13, 1981, under which Canada transferred its municipal services responsibilities, including housing, to Quebec. The Inuit maintain that Canada should have required Quebec to maintain specified levels of services and housing construction as a condition of the Transfer, and that the Inuit should have been a formal party to the Agreement. In the opinion of the Inuit, Canada's actions have set back the construction of needed facilities in their communities.

The position of Quebec and Canada that the Transfer Agreement was necessary in order to implement the "unified system" provided for in Section 29.0.40 is strongly contested by the Inuit. They believe that "unified system" did not necessitate Quebec assuming responsibility for the programs and services previously provided by Canada.

The Inuit are particularly concerned with the extremely poor state of their school facilities. Many of the Inuit schools are overcrowded, dilapidated, lack proper sanitary facilities, pose a serious fire hazard, are grossly energy inefficient and, in the view of the Inuit are, in general, a very poor environment in which to educate their children.

In interviews with the review team, Mr. Watt, and other Inuit representatives, repeatedly reiterated their belief that, without a quick improvement in education facilities, the new generation of Inuit students would be deprived of the education that the Inuit so desperately need if they are to fully take control of their own futures and ensure their cultural vitality.

D. Review of Issue

The needs of the Cree and Inuit communities were viewed at first hand by the Minister of Indian Affairs, his Parliamentary Secretary, members of the Standing Committee on Indian Affairs, and DIAND officials working on the review. Many communities experience overcrowded housing, inadequate water and sanitation services, little fire protection, poor roads and little municipal infrastructure. Education facilities are often poor, particularly in the Inuit communities. Ironically, given the purpose of the Agreement, some communities experience difficulties with electricity.

It is clear, from discussions with people involved in the negotiation of the Agreement, that the general tone and spirit of the negotiations engendered high expectations about the changes and improvements that the Agreement would bring for the Crees and Inuit. In 1975 there was little doubt in anyone's mind that a major commitment would be required to improve the very poor conditions in the villages. The native parties submitted evidence to the review team that indicates that the need for a major initiative in Northern Quebec was officially recognized as long ago as 1966. Despite the admitted vagueness of the Agreement, it was felt that the Agreement would give the native parties and both governments the impetus to quickly improve conditions. The native people had been repeatedly promised that, as soon as the uncertainty as to the title of the land was resolved, the people could expect a rapid improvement in conditions.

There have been some improvements over the last few years, but they have not been as dramatic or quick as many people on both sides of the negotiating table had hoped and intended would be the outcome of implementing the Agreement.

a) Housing and Infrastructure Expenditures

In implementing the terms of the Agreement with respect to housing and infrastructure DIAND adopted the position, based on a legal interpretation of Sections 2.11, 2.12 and 28.1.1 (see: Section 4.1 above), that the Cree and Inuit communities were entitled, except where otherwise specifically provided in the Agreement or its related documents, to the same programs as those enjoyed by other Indian and Inuit communities in Canada.

On the basis of this interpretation and applying the criteria of proven need, DIAND expended $26.4* million on housing and infrastructure in the Cree communities in the period 1975/76 - 1980/81 and $11.9 million in the Inuit communities in the period 1975/76 - 1979/80. (Direct administrative responsibility for Inuit housing and infrastructure was assumed by Quebec in 1980/81).

DIAND has consistently maintained that provisions of Section 28.11.1, dealing with essential sanitation, (though not housing) is subject to Section 28.1.1 (See: Section 4.1 above) which sets out preliminary provisions relating to Section 28:

> "Programs, funding and technical assistance presently provided by Canada and Québec, and the obligations of the said governments with respect to such programs and funding shall continue to apply to the James Bay Crees on the same basis as to other Indians of Canada in the case of federal programs, and to other Indians in Québec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs, and to general parliamentary approval of such programs and funding".
>
> "The foregoing terms, conditions, obligations and criteria will apply to all federal programs referred to in this Section."

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*The expenditures in the Cree communities includes a $10 million expenditure for the relocation of Fort George. The Crees consider that this was a "special" expenditure resulting from the Agreement and should not be considered as an "ongoing" expenditure. DIAND officials on the other hand contend that at least half of this expenditure should be legitimately attributed to ongoing programs.

On this basis, the Department carried out the construction of "essential sanitation services" in Cree communities, in accordance with existing programs established for that purpose. In the view of the Federal negotiators, Section 28.11.1 was intended to give recognition to the particular needs for sanitation services of the Cree communities, but did not establish a guaranteed level or time frame for funding. Furthermore, it was considered that the inclusion of Québec funding under Section 28.11.1 would help cover those costs which could not be covered through the application of the ongoing Federal program. Quebec's participation was intended to accelerate and enrich the ongoing Federal program.

As noted previously, interviews with senior officials of the Quebec Region of DIAND indicate that Regional officials treated the Cree and Inuit communities like other communities in the Region, taking into account proven needs and the overall funding capacity of the Region and Department. Regional officials note, however, that the proven needs in the communities far exceed the Department's current funding capacity, and that the situation has become particularly severe in the last several years.

In conducting this review, DIAND housing and infrastructure budgets for the years 1973/74 - 1979/80 for the Cree and Inuit communities were studied in detail. As was the case with the general pattern of Federal expenditures, discussed in Section 5.1, it was not possible to reach any firm conclusions as to the pattern of these expenditures.

The major problem with evaluating housing and infrastructure expenditures is the fact that these allocations are made on the largely subjective criteria of need. Therefore any attempt to gauge expenditures against standards such as the regional per capita allocation, is of doubtful validity.

Nevertheless, an examination of the budgetary information indicates that expenditures in the Cree communities, when looked at in terms of their proportion of the overall Regional capital budget, have remained relatively constant since 1973/74. There is no indication that budgets declined in the period 1973-1975, which corresponds to the period during which the Agreement was being negotiated.

An examination of expenditures in the Inuit communities indicated that there was a decline in funds allocated to the Inuit, as compared to the Regional budget, in the period 1973 - 1975. Expenditures stabilized and began to increase in the period leading up to the transfer of Federal responsibilities to Quebec in 1981. The reasons for this change in expenditure patterns are not clear.

Regarding the existing condition of Inuit and Cree housing and infrastructure there is little doubt that despite the Federal expenditure, conditions are, in general, still below acceptable standards. The lack of proper sanitation facilities and poor housing constitutes a continuous health and safety hazard. These poor conditions are a major factor in the poor level of health in the communities and can be linked to periodic outbreaks of serious diseases, such as gastro-enteritis and T.B.

b) Five Year Cree Housing and Infrastructure Agreement

Under the terms of the Five Year Housing and Infrastructure Agreement, signed in May 1979, the Cree Housing Corporation assumed, on behalf of the James Bay

Crees, responsibility for the planning, implementation and construction of housing and infrastructure facilities in the Cree communities. The main object of the Agreement was to enable the Crees to carry out a proposed five year Cree Community Development Plan at a cost, estimated by DIAND, of $45.2 million (1979 dollars). The Crees estimate the cost of the program at $61.5 million. It is clear to both the Crees and Department officials that there have been serious problems in implementing this Agreement.

The Housing Agreement recognizes the limited capital funds available to the Quebec Region. To accelerate the Development Plan, the Agreement provides for the possibility of the Cree Regional Authority advancing additional funds to supplement DIAND's regular allocation during the 5 years construction phase of the program, with the Department reimbursing the Crees over the succeeding 5 years. This would, in effect, result in the Crees utilizing 10 years of Department funding over a 5 year period. During the 5 year construction phase the Department undertook, subject to Parliamentary approval, to maintain funding:

> "at a level which will be approximately equivalent to the share of such funding provided to the Cree communities of Quebec for the 1977-78 and 1978-79 fiscal years and this for the duration of this agreement. If our budgets were to remain the same as at present, this would represent an amount of approximately $3.5 million per year."

On the basis of these provisions, and assuming that the $3.5 million level would, at the very least, be maintained, the Crees estimated that DIAND would contribute $35.5 million to the $61.5 million program. Another $13.2 million was to be financed by mortgages. This left a shortfall of $12.8 million which the Cree expected would be covered, at least in part, by Quebec, pursuant to its obligations under Section 28.11.1.

The Crees' hope for Quebec funding was supported by a special report carried out by Quebec's Director of Environmental Protection Services, Mr. Gilles Jolicoeur, which clearly confirmed the need for immediate and wholesale improvements in sanitary facilities in the Cree communities. Preliminary discussions were held with Quebec in 1980 on this subject. Quebec has maintained that its responsibilities extended only to Category IB lands, on which there is little settlement and as yet has provided no funding, Quebec has, however, indicated that it has not categorically, refused to provide funding.

Unfortunately, for reasons that are not clear, discussions with Quebec have been suspended. In addition the capital portion of the Department's budget has declined relative to the overall budget, thus preventing achievement of the $3.5 target funding level. Cost overruns, attributable to transportation and logistic difficulties, inflation, and some management problems, have occurred on several of the Cree projects. The Crees have, as a result of these factors contributed more of their own money than they had anticipated and the completion date for the Plan has been pushed back to 1987.

To complete the housing and infrastructure program, taking into account projects completed since 1979, the Crees have projected expenditures of approximately $72 (1981$). Taking into account current funding levels of the Department (and assuming no further cuts), CMHC loans, and other sources of funding, including the use of the Crees' own funds, they estimate a major deficit, in their housing and infrastructure program. In addition, the Crees maintain they have already spent $15 million of their own money on projects which, in their view, should have been funded, in part, by Canada and/or Quebec. An examination of the audited statements of the Cree Regional Authority (CRA) and the Cree Housing Corporation (CHC) confirms that approximately $15 million, derived from compensation fund revenues, has been loaned by the CRA to the CHC to carry out housing and infrastructure projects.

Although the Crees' expenditure estimates may be high, it is generally recognized by Department officials that given current funding levels, the Department could not meet the Crees' needs, within a desirable timeframe, without having a serious detrimental impact on the progress of programs in other areas of the Region and country, and unless the Crees themselves and Quebec participated in the financing.

c) Environmental Health Conditions in the Cree Communities

Despite disagreements as to the precise legal or moral obligations incumbent upon Canada as a result of the Agreement it is clear that Canada has a responsibility to do everything possible to ensure that the Cree communities have potable water and adequate sewage disposal facilities. This responsibility is reflected in Section 28.11. It is beyond doubt that lack of proper infrastructure facilities is a major factor in the poor health conditions experienced by the Crees and Inuit. It is also true that the overall issue of health care is closely linked and dependent on the living conditions in the communities. There will not be significant improvements in health conditions until there are improvements in overall living conditions and, in particular, essential sanitation services.

The urgent need to deal with environmental health problems was recognized by the Minister of Indian Affairs, the Honourable John C. Munro, when in September 1980, he undertook to consider the Crees' proposal for a remedial works program in the Cree communities of Nemaska and Rupert House, both of which had fatal outbreaks of gastro-enteritis in the summer of 1980.

There were difficulties in resolving the nature and cost of a suitable remedial program. However, in December 1980 Agreement was reached on a program budgeted at approximately $500,000. This program is now being implemented by the Cree Housing Corporation and to date Canada has contributed $469,786 for its implementation. Funding for this program will continue until permanent facilities are in place.

The Crees have worked very hard to make the program effective and have advanced their own funds, subject to repayment by Canada, to fund part of the program. They have reported that the remedial program appears to have been effective and there have not been any serious disease outbreaks in Nemaska or Rupert House recently. Permanent infrastructure facilities are now being installed in both communities by the CHC.

The Crees have identified a potentially serious health problem in Paint Hills and have proposed a $1 million program to provide emergency remedial services to that community. Discussions are underway with the Crees to determine the need, technical details and funding of such a program. The Cree Housing Corporation has undertaken a project to ensure that the community water supply is potable, and their expenditures will be reimbursed by DIAND. Work on permanent facilities for the community will begin this year.

Serious problems have also been identified in Eastmain and short term remedial measures are being considered for quick implementation in both communities. There is, however, a continuing need for the construction of permanent facilities as quickly as possible.

d) Nemaska and Eastmain

The 1974 Federal letter of undertaking to the Crees commits Canada to "fund and assist" in the re-establishment of a permanent community for members of the Nemaska Band. Mr. Buchanan's letter of November 11, 1975 to Chief Diamond qualified this undertaking by specifying that "no new or special funds can be provided for this purpose" and, consequently, costs of the relocation would have to be paid out of regular appropriations. The Crees maintain that they understood the 1974 letter to mean that new funds would be available and that the relocation would be carried out quickly.

The Department received Treasury Board approval in 1979 to participate in a 10 year program to build Nemaska. Federal funding of $2.1 million (1978 dollars) was approved. There is some indication that this funding may not have been fully adequate to provide adequate facilities. Part of the Nemaska Band has already been relocated at the new site and construction of additional factilities is continuing.

The Federal letter of undertaking also obligated Canada to "undertake studies to identify the feasibility and costs of constructing water and sewage system for the ... [community of] Eastmain and provided that a suitable system can be built at a reasonable cost ... will construct such a system."

A masterplan for Eastmain, including the construction of water and sewage facilities, is currently being worked out by the Cree Housing Corporation in conjunction with the residents of Eastmain. The priority for construction of facilities in Eastmain will be determined by the Cree Housing Corporation taking into consideration available funds, the needs of other communities, and other relevant factors.

The Cree concerns regarding the Nemaska and Eastmain projects relate to the overall issue of whether certain commitments should be considered as "special" obligations or as goals to be achieved within the general ambit of ongoing programming and funding. The review team could find no evidence that it was intended that Canada should assume total responsibility for funding these projects or that Canada was obliged to carry out the projects immediately upon signing the Agreement. Moreover, it appears that it was intended that the projects would be carried out with participation by Canada, Quebec, and the Crees, and that the priorities for construction would be based on an evaluation of competing needs in other Cree communities. Nevertheless, the letter of undertaking indicates a clear commitment by the Minister, acting as a representative of the Government of Canada, to carry out the Eastmain and Nemaska projects.

e) Inuit Housing and Infrastructure: Northern Quebec Transfer Agreement

The Inuit have requested that Canada participate in the funding of a special accelerated program to upgrade services and facilities available to the Inuit of Northern Quebec to a level comparable to

Northern communities in other areas of Canada. Although Quebec assumed full responsibility for the Inuit communities in February 1981, under the terms of the Northern Quebec Transfer Agreement, the Inuit contend that, in light of the constitutional and moral responsibility that Canada has for the Inuit, the conditions existing in the Inuit communities when the Transfer Agreement was signed, and Quebec's failure to provide what the Inuit consider to be an adequate level of service, Canada should assist in funding the upgrading program. The need for an upgrading program is well documented in the Quebec-commissioned Jolicoeur Report on conditions in the Inuit communities.

Inuit concerns about the condition of their housing are confirmed by a recent Quebec Housing Corporation assessment which found that approximately 700 of the 800 units, constructed under DIAND's Northern Rental Housing Program, were in need of major renovations. In general the houses are poorly constructed, poorly maintained, grossly energy inefficient, overcrowded, and lack essential facilities such as water and indoor toilets.

The facilities and services available in Inuit communities in the N.W.T. are clearly superior to those in similar communities in Northern Quebec. This was clearly evident when, as part of the review, Mr. Ray Chenier, M.P., Parliamentary Secretary to the Minister of Indian Affairs, and DIAND officials toured some of the Inuit communities and then visited Cape Dorset, N.W.T. to compare conditions.

The reasons for the discrepancy between the N.W.T. and Northern Quebec are not clear. Part of the disparity may also result from differences in the programs provided by the Government of the Northwest Territories, which had responsibility for Inuit in the N.W.T., and those provided by the Indian and Inuit Affairs Program, which had responsibility for Inuit in Quebec. The Inuit maintain it was generally felt, but not specified in the Agreement, that one outcome of the Agreement would be to bring the Quebec Inuit communities up to the level of similiar communities in the N.W.T.

The Northern Quebec Transfer Agreement provides that Canada will pay Quebec $72 million at the rate of $8 million a year for 9 years as well as transfer $30.2 million dollars in assets to the Quebec government. This Agreement, although not specifically required by the James Bay Agreement, was necessary, in Canada's view, to achieve the "unified system" of municipal service delivery envisaged in Section 29 of the Agreement. The Inuit objected to Canada signing the Transfer Agreement because, in their opinion, it did not furnish sufficient guarantees that Quebec would supply the services previously provided by Canada at a level adequate to meet the needs of the Inuit communities.

An examination of the history of the Transfer Agreement makes evident the dilemma faced by Canada at the time of its signing. The expenditure plans submitted by Quebec to the Inuit during the discussion of the Transfer Agreement indicated that Quebec was anticipating spending significantly more in the Inuit communities than Canada had spent in the years immediately preceding the proposed Transfer. One of the key elements of the expenditure plan, the Inuit housing program, had, however, not been approved by February 1981 when Quebec put considerable pressure on Canada to sign the Agreement. There were assurances from high level Quebec officials, offered with the condition that a final decision would be made by Quebec

Cabinet, that a housing program essentially along the lines agreed to by the Inuit would be approved.

Quebec indicated to Canada that any delay in signing might result in the Transfer being delayed indefinitely. The urgency to conclude the Transfer was further heightened by the anticipated Quebec election and by the realization by Federal officials that, if the Transfer did not take place, Canada could not match the expenditures planned by Quebec, even if the proposed housing program was not approved.

There was also confusion as to the real desire of the Inuit, both in relation to the Transfer Agreement and the acceptability of the housing program proposed by Quebec. At one point the Minister of Indian Affairs received a letter from the Kativik Regional Government, representing the Inuit municipalities, urging him to sign the Transfer. This letter was later withdrawn by Kativik.

On the basis of the facts before him, and acting on what he considered to be strong assurance from Quebec regarding the housing program, the Honourable John C. Munro signed the Agreement on behalf of Canada on February 13, 1981. Several weeks later it was revealed that the housing program finally approved by Quebec fell short of the program anticipated by the Inuit.

In retrospect, the final decision regarding the housing program is regrettable. However, it appears clear from the evidence that Canada was attempting to act in the best interests of the Inuit. Moreover, Quebec expenditures in all areas, including housing, will still exceed the funding that was previously provided by Canada. However, because Quebec is building the Inuit housing to conform to much higher standards than were used by Canada the cost per unit is much higher and, consequently, there has not been a significant change in the number of units built annually. The funds which would have been available to DIAND for Inuit housing and municipal services, if the Agreement had not been signed, would have been approximately $8 million. Quebec, even with the scaled down housing program, plans to spend $24.5 million during the same period.

The Quebec government's program for Inuit housing is being carried out by the Quebec Housing Corporation with cost-sharing through CMHC's regular social housing program. An examination of current housing plans indicates that even if Quebec upgrades its program, along the lines it promised in February 1981, it still would take at least 10 years just to bring all Inuit housing up to an acceptable standard.

According to the most recent estimates, the Inuit require 465 new houses and 700 renovations over the next 10 years. As noted before, the 700 renovations are required largely because the houses transfered to Quebec by Canada do not meet basic CMHC housing standards. In addition, as a result of rapidly increasing fuel costs, the operation and maintenance expenditures involved in maintaining the Inuit housing will increase rapidly in the coming years.

f) Inuit School Facilities

In their tours of the Inuit villages Mr. Munro, Mr. Chenier, and DIAND officials were particularly impressed by the validity of the Inuit concern regarding the condition of their school facilities. Many of the school facilities are seriously inadequate. Many of the buildings are seriously overcrowded, lack proper sanitation and fire protection facilities and are in general disrepair. Many of the buildings used as schools were not intended as such and have not been properly adapted for school use. Some do not even provide adequate basic shelter let alone a proper learning environment.

The reasons for the inadequate state of Inuit school facilities are difficult to pinpoint. It is at least partly a result of the extremely high cost of construction in the North and generally inadequate budgets. These two factors resulted in very little progress in improving school facilities. In recent years significant increases in enrollment and retention have tended to compound the problem.

Since 1978 direct responsibility for Inuit education has rested, pursuant to the Agreement, with the Kativik School Board, which was established by Quebec and comes under provincial jurisdiction. As specified in the Agreement, Canada contributes 25% of the operational and capital budget of the Board.

Shortly after its establishment Kativik devised a comprehensive 5 year capital development plan for educational facilities. The Board has to date been unable to attain the funding commitments they require to implement this plan. In their view each year of delay simply compounds the serious problems they are already facing.

In opting for an Inuit controlled school board, under Quebec jurisdiction, the Inuit clearly indicated their desire to make education one of the top priorities in the cultural, economic, and social development of their communities. The Inuit believed that the school regime established under the Agreement was the key to ensuring the cultural survival and economic vitality of their people.

The lack of proper facilities is clearly hampering the realization of their educational goals.

On the basis of the first hand observations of the Minister, Mr. Chenier and DIAND officials it is clear that the Inuit are justified in demanding that the construction of new school facilities be given a very high priority.

E. Comments/Summary

The Crees and Inuit have given great emphasis in their presentations to the needs of their communities. First hand examination of the situation, by Mr. Munro and others, has confirmed serious and sometimes critical, needs in the area of housing, municipal infrastructure, education facilities, essential sanitation and fire prevention in many communities. All these factors have combined to perpetuate a living environment, which, in many cases, has resulted in serious health and social problems. These problems will continue until action is taken to improve the general living environment.

The native parties reasonably believed that the Agreement would pave the way for quick improvement of their urgent housing and infrastructure situation within a relatively short period of time and that they would assume the administration of the programs that would be required. That the overall results anticipated in 1975 have not been achieved seems to be a result more of budgets that have decreased in relation to costs than a failure to respect the Agreement or the justified expectations of the native parties.

At the time the Agreement was signed Federal officials had reasonable grounds to believe that the major problems of the Inuit and Crees could be solved through the application of ongoing programs, as well as the undertaking of the specific obligations contained in the Agreement. In retrospect it appears that this approach has, in many cases, not been sufficient to overcome many of the most serious problems. In addition, serious difficulties in interpreting Sections such as 28.11.1 have complicated discussions aimed at finding solutions. As has been noted elsewhere in this Report, we have concluded that Section 28.11 calls for the best efforts of Canada to provide essential infrastructure for the Cree communities. In relation to the Inuit, we would note, in particular, that Canada has an ongoing responsibility in respect of education and schools; a funding responsibility that Canada shares with Quebec.

After examining the spirit and the letter of the Agreement from a global perspective the review team concludes that it is desirable for Canada, Quebec, and the native parties to consider together new and, where possible, special initiatives to accomplish the goals and realize the expectations of 1975 with as little further delay as possible.

5.2.2 Cree Health Services

A. Issue

The Crees allege that Canada and Quebec have failed to fulfill their obligations with regard to health services and health related services such as essential sanitation. They maintain that these alleged breaches have seriously jeopardized the health of the Cree people.

B. Provisions of the Agreement

Section 14 of the Agreement provides for the establishment, by Quebec, of the Cree Regional Board of Health and Social Services "in order to exercise the powers and functions of a Regional Council within the meaning of the Act respecting Health and Social Services (L.Q. 1971, c. 48)". The Board has responsibility "for the administration of appropriate health services and social services for all persons normally resident or temporarily present in the Region". The Board also has authority over existing and future health facilities in the Region including the hospital at Fort George.

Section 14 also provides that:

a) "...Quebec should recognize and allow to the maximum extent possible for the unique difficulties of operating facilities and services in the North..." (14.0.19);

b) to the maximum extent possible health and social programs and services will be applied through the Cree Health Board (14.0.20);

c) budgets will be based on actual Federal and Provincial expenditures in 1974/75 modified on the basis of changes in population, costs, and the evolution of general Provincial health services (S.14.0.23);

d) health services be gradually transferred from Federal to Provincial control through the Cree Board of Health (14.0.25);

e) Quebec will recognize and protect the special mandate and prerogatives of the Cree Board of Health (14.0.28).

Sections 14.0.25, 14.0.26, 14.0.27 and Schedule 1 provide that responsibility for health services and facilities are to be transferred from Canada to the Health Board in an "orderly and deliberate manner" and outlines the steps to be taken to achieve this aim.

C. Position of the Crees

On March 26, 1981 the Crees appeared before the Standing Committee on Indian Affairs and Northern Development and on May 19, 1981 before the Standing Committee on Health, Welfare and Social Affairs. On both occasions, the Crees made very strong representations concerning their dissatisfaction with the way in which Quebec and Canada have fulfilled their responsibilities relating to health.

The Crees contend that two major issues are at the root of their current health problems:

i) the failure of Canada and Quebec to provide adequate housing and infrastructure and in particular the lack of essential sanitation services as provided for in Section 28.11.1 of the Agreement and;

ii) the failure of Canada and Quebec to fulfill the provisions of Section 14 dealing with the delivery of health care services.

The Crees contend that these issues are closely related, and that together they have contributed to a very serious health situation in the Cree communities which has resulted in the outbreak of serious diseases, including a gastro-enteritis epidemic in which a number of Cree infants died.

The issue of housing and infrastructure was discussed in Section 5.2.1. This Section will focus on the related issue of the health care regime provided for in Section 14.

The primary purpose of Section 14 was, in the view of the Crees, to establish a Cree run health care system, operating through the Cree Board of Health and Social Services, and with its operational centre at Fort George. In their view the Health Board has not been given the authority or funding necessary to fulfill the aims of Section 14.

The Crees maintain that their ongoing efforts to force Quebec to fulfill its obligations pursuant to Section 14 led to open confrontation between the Crees and Quebec, which resulted in the Crees launching legal proceedings against Quebec, seeking enforcement of Section 14, and Quebec putting the Health Board under provisional administration. The Crees also launched legal proceedings against Canada, claiming that Canada also has been negligent in fulfilling its responsibilities pursuant to Section 14.

The creation of the Health Board under Quebec jurisdiction, and the transfer of Federal facilities and health service responsibilities to the Board, as provided for in Schedule 1, the Crees argue, does not relieve Canada of its ultimate constitutional responsibility for Cree health. They maintain that, notwithstanding the provisions of the Agreement, Canada has a constitutional responsibility, pursuant to Section 91(24) of the British North America Act, to provide health and social services to the Crees.

The manner in which Canada carried out its final withdrawal from Cree health care on March 31, 1981 is a matter of particular concern to the Crees. They contend that this action was in contradiction to the spirit and legal intent of the Agreement. In their view the March 31, 1981 date, set out in Schedule 1 of Section 14, especially when considered in light of Section 14.0.26. was merely a target date for the final transfer but did not constitute a legal requirement that all Federal services cease on that date. The Crees maintain that, in view of the very serious health problems in the communities, and the virtual breakdown in relations with Quebec, Canada should have maintained its existing health facilities until such time as they could be transferred in an orderly and deliberate manner, and in a way that would ensure a continuity in the level and quality of health care available. The Crees maintain that their entitlement to Federal health services was guaranteed by Sections 14.0.26 and Schedule I and that this entitlement was subject only to the Cree communities explicitly agreeing to Quebec assuming responsibility.

The Crees emphasized their views on ongoing Federal responsibility in their brief to the Standing Committee on Health, Welfare and Social Affairs:

> "... federal laws, programs and policies continue to apply to the Crees. The contemplated assumption under the James Bay and Northern Quebec Agreement by the Cree Health Board, a provincial creature, of greater responsibility for the administration of health and social services does not mean that all federal responsibility and obligations then ceased. Nor is such assumption by the Cree Health Board the equivalent of a release to the Federal Government to provide such services or an authorization to the federal government to terminate its constitutional responsibility to the Crees in health and social services matters."
>
> "There is no justification for the position of the Federal Government that Section 14 of the Agreement "requires" that the Federal Government cease all health and social services for the Crees as of March 31, 1981. Nor does Section 14 of the Agreement authorize an abdication of federal jurisdiction in these matters. Even if it is eventually held by the Courts that the Federal Government is no longer involved in the delivery of health and social services to the Crees, the Federal Government would still retain ultimate responsibility for the health and welfare of the Crees and for ensuring that Section 14 of the Agreement is properly implemented" (underlining in the original).

In the view of the Crees Canada has a responsibility, as a minimum, to act "as the guarantor of adequate health and social services for the Crees" and to "provide them the means to ensure such adequate services ...." (Underlining in the original).

The Crees also argue that Section 2.12, which provides for ongoing Federal programs to apply to the Crees, means that the Crees continue to be eligible for Federal Indian Health Service Programs, even if there are special provisions for Cree health and social services provided for in the Agreement.

A legal action against Canada was launched by the Crees in December 1980 alleging that Canada has failed to fulfill its obligations pursuant to Section 14. Hearings have not yet been held on this case. An attempt by the Crees to get an injunction preventing the March 31 transfer of health services was denied on a point of law without the merits of the issue being considered.

D. Review of Issue

The Cree health care system faces serious problems. The various disputes and problems regarding health care have resulted in many of the health care staff, and the recipients of health services, losing confidence in the ability of the Cree Board to provide a consistently adequate level of health services. This crisis of confidence is reflected in the extremely high turnover of administrative and health care staff, the difficulty in recruiting new staff, and the reluctance of individual Crees and whole communities to accept Health Board services until they are certain that the Board is capable of providing adequate health care.

There appear to be three major issues which have contributed to the current crisis:

a) continuing tension between the Cree Health Board and the Province of Quebec relating to the mandate and budget of the Board, and the operation of the new hospital in Chisasibi;

b) continuing dissatisfaction with the manner in which the final transfer of Federal responsibility was carried out on March 31, 1981, and disagreement as to the proper ongoing role of Canada with regard to Cree health care;

c) internal management problems within the Cree Board which were significantly worsened by the continuing difficulty regarding issues a) and b);

The second issue, b), relates to Canada's responsibilities under the Agreement.

The issue of Federal responsibility for Cree Health services appears to stem from a disagreement that arose during negotiation of the Agreement. All parties agreed on the desirability of establishing a Cree run health board under Quebec jurisdiction. The Crees, however, expressed a desire to maintain Federal participation in health services through funding and/or direct program delivery. Both the Federal and Provincial governments rejected the idea of joint Federal-Provincial involvement. In the view of the Federal negotiators the Agreement reflects, and was intended to reflect, the final negotiated position, which provided for joint funding and delivery during a transitional period, after which Quebec, acting through the Health Board, would assume full responsibility. The Federal negotiators maintained that, although Canada would no longer provide direct funding and services, Federal involvement would be maintained through ongoing programs such as the Federal-Provincial health services cost-sharing agreements, as well as continuing Cree access to special programs such as those dealing with drug and alcohol abuse.

The Department of National Health and Welfare (NHW), which was charged with implementing Section 14, based their implementation strategy on the understanding that Canada would hand over responsibility to the Cree Health Board no later than

March 31, 1981. On this basis, NHW negotiated with the Crees and Quebec for the transfer of several facilities and successfully concluded agreements concerning these.

When the desirability of the final transfer of March, 1981, was questioned, Federal lawyers reviewed the legal requirements and found that in their opinion the transfer was indeed required by the Agreement. Further, NHW officials were of the view that, because the transfer had taken place in stages, no real purpose would be served by delaying it. The Crees have indicated that they felt badly let down by the Federal government's actions in this area, but we have found no reason to question the good faith of the government in proceeding with the transfer.

Canada is not in a position to determine whether Quebec is adequately performing the duties they took over from Canada. However, a NHW analysis of budgets before and after transfer does not indicate any significant drop in funding levels nor does there appear to be any significant decline in the services provided to the Cree people. It is worthwhile to note, however, that Cree Health Board officials maintain that, while it is accurate that funding levels have not dropped, there are significant costs which previously were indirectly funded by Canada, but which are not reflected in the budgets provided by Quebec. They also maintain that the level of services and funding provided by Canada was inadequate, and that this problem has been compounded by transferring the services to Quebec jurisdiction.

The Cree villages involved in the March 31, 1981 transfer still do not accept the legitimacy of Quebec jurisdiction over their health services. They have accepted health services provided by Quebec through the Health Board solely on humanitarian grounds, but still maintain that the Federal government has an ongoing responsibility for their health care.

In reviewing Canada's actions with regard to the transfer, it is clear that, although Canada's actions were based on a legal opinion, there are several unresolved issues relating to Canada's responsibilities which remain to be resolved. Although it is probably neither desirable nor possible for Canada to reassume Cree health care responsibilities, it would be clearly desirable for all the parties to the Agreement to enter into discussions aimed at resolving the overall issue of jurisdiction over Cree health care. Such discussions should be aimed at resolving the continuing dispute with regard to the March 31 transfer, as well as ways of implementing NHW's standing offer to provide consultative and advisory services to the Cree Board of Health and Quebec. Discussions might also focus on ways of ensuring that the Crees have continued access to special health care programs, such as the drug and alcohol abuse program, and the environmental contaminants program.

Canada has tried on several occasions to settle the overall health care issue through negotiation rather than through confrontation and legal proceedings. In November 1980, Federal officials met with senior Quebec officials to urge a negotiated solution to the dispute which, by that time, had already resulted in the Crees suing Quebec, and Quebec placing the Health Board under trusteeship. Federal officials were not able to convince Quebec or the Crees to take a more conciliatory approach to the dispute.

More recently, the Minister of National Health and Welfare, the Honourable Monique Bégin, acting on the basis of a resolution of the Standing Committee on Health, Welfare and Social Affairs, proposed a meeting between herself, the Minister of Indian Affairs, the Crees and the Quebec Minister of Health and Social Services. Despite several attempts to arrange a meeting the Quebec Minister has refused to meet.

Recent bilateral discussions between NHW officials and representatives of the Health Board have been productive. Problems concerning the provision of health services to Crees living outside the territorial limits of the Health Board have been resolved on an interim basis pending discussions with Quebec. Discussions of a technical nature have been held on how to determine optimal service levels. NHW officials have provided information on how the Crees can apply to receive various special ongoing programs such the alcohol abuse program and they have made the Crees aware of various health advisory services NHW is prepared to provide.

NHW officials have reviewed certain expenditures incurred by the Crees as a direct result of the transfer of health care responsibilities from Canada to Quebec. Consideration is being given to the possible repayment of these funds.

The pending legal actions have clearly affected negotiations on this matter, because the parties are now somewhat reluctant to discuss the dispute for fear of jeopardizing their legal position. As the resolution of the dispute via the courts may take several years, it would appear to be in the long term interests of all parties to attempt to find a resolution that would enable the Crees to assume meaningful control of their health care system, as is clearly intended in the Agreement.

Regarding the two other major problems noted above, there appear to be current initiatives aimed at resolving them. The Cree Health Board has been reorganized and a new management team is now almost completely in place. The Board has been involved in budget negotiations with Quebec for almost a year and, although a final budget has not yet been approved, there are indications that Quebec considers the Board's current budget proposals to be reasonable, and that adequate funding should be forthcoming shortly.

E. Comments/Summary

Canada's objective in dealing with the issue of Cree health care services has been to make the Agreement work as intended, and thereby ensure that the Cree people receive a consistently high standard of health care services. Canada's aim has been, and will continue to be, to attempt to resolve this issue through tripartite negotiation. It is clear that such negotiations are essential to the resolution of this problem.

A resolution of the jurisdictional and budgetary problems of the Health Board and a new initiative regarding the provision of essential sanitation, as discussed in 5.1, are necessary steps in remedying the serious health problems currently being expressed by the James Bay Crees. The assumption by Canada of responsibilities which clearly rest with Quebec, even if it was legally possible, would do little to enhance overall implementation of the Agreement.

5.2.3 Economic Development

A. Issue

The native parties contend that the Agreement in its spirit and letter obligates Canada to encourage and promote the economic development initiatives of the native parties. They contend that Canada has failed to encourage economic development and has only applied the current inadequate programs available to all native communities.

B. Provisions of the Agreement

Sections 28 and 29 deal, respectively, with Economic and Social Development of the Crees and Inuit. The provisions of the Agreement in these sections should be read in conjunction with Sections 2.11 , 2.12, 28.1.1 and 29.0.2, all of which are discussed above. Section 29.0.2 is the Inuit equivalent of Section 28.1.1.

Chapter 28 provides for Canada to assist in the funding and/or establishment of: a Cree Trapper's Association, a Cree Outfitters and Tourism Association and a Cree Native Arts and Crafts Association, (28.4 - 28.7)"; a Joint Economic and Community Development Committee (28.8); for Training courses and employment opportunities (28.9 - 28.10); funding of economic development agents and community workers (28.11); and financial assistance to Cree Entrepreneurs (28.12). While most of the programs contained in Chapter 28 are joint undertakings of Quebec and Canada (28.9 - 28.10), some are to be undertakings of the Cree, Quebec and Canada (28.4, 28.11), while others are undertakings limited to Canada (28.12.4).

Federal involvement in economic programs for the Inuit in Chapter 29 includes: job training and employment (29.0.24 to 29.0.32); an interim joint committee to coordinate and make recommendations on Federal and Provincial socio-economic development programs (29.0.33 to 29.0.35); and support to "Inuit entrepreneurs by providing them with technical and professional advice and financial assistance" (29.0.39).

C. Position of the Native Parties

The Crees argue that the implementation of Chapter 28, which was meant to be

> "a blueprint for new economic and social programs, services and undertakings for the Cree which would allow them to participate in the 'opportunities' presented by development in Northern Quebec",

has been an unqualified failure.

Because of cutbacks and inflation, the Crees maintain the Department's budget for economic development programs has been reduced, thereby reducing the proportion available to the Crees, while "there has been no effort to continue to have other

Federal programs apply to the Cree people of James Bay". The Crees argue that DREE programs, and other Federal economic development projects, have been applied in a very "minimal way to the James Bay Territory and the Cree people of James Bay".

The Crees contend that the programs mentioned in Section 28 were to be in addition to existing programs available under the provisions of Section 2.11, 2.12 and 28.1.1. In an interview with the review team, the Crees indicated that they would not have signed the Agreement if they had understood that all programs in Section 28 were to be considered only as normal ongoing programs.

The Crees would like to see the funding of "a master economic development plan, a staff of qualified people, training programs and access to programs for financial assistance to new businesses". They would like to see the emphasis placed on transportation routes and infrastructure.

The Inuit argue that Canada is obliged to encourage and promote Inuit economic development. They argue that Canada's obligations have not been met, and that any proposal of the Inuit is not implemented "unless the measure fit squarely within the four corners of existing federal programs".

While the Inuit are aware that funding of programs has to be subject to the approval of Parliament, they argue that Canada has interpreted this provision to mean programs that Canada undertook to establish for the Inuit "had to be pigeon-holed into existing program criteria which are inflexible and do not contemplate those measures...". They state that Makivik enterprises, regardless of Canada's undertaking in Section 29.0.39, have not received any assistance with start-up costs. The Inuit feel their enterprises should be eligible for DREE grants, which the Inuit view as being contemplated by the Agreement.

In testimony before the standing committee, Mr. Mark Gordon, Vice-President of the Makivik Corporation was critical of Canada's performance regarding Inuit economic development.

> "In the area of economic development we have been virtually without any assistance at all. Almost all southern-based companies that now operate in the north got there with government subsidies. But here we are, trying to develop this area for the permanent population and there are no subsidies available to us."

In discussing economic development issues with the review team, the Inuit repeatedly emphasized the urgent need for vocational and academic training programs in order to prepare Inuit people to play a meaningful and productive role in the economic, social, political and cultural development of their communities. In their opinion, Section 29.0.27, which calls for the creation of an interim joint committee to coordinate Federal and Provincial manpower training programs, was intended to make provision for the quick resolution of this urgent problem.

The Inuit contend that very little progress has in fact been made in improving the training opportunities available to them. The current programs are, they feel, inflexible and poorly suited to Inuit needs, and provide living allowances which do not reflect the real cost of living in the North.

D. Review of Issues:

a) Interpretation of the Agreement

Much of the language of Sections 28 and 29 is not precise and has created major problems of interpretation. Where the Crees and Inuit have generally felt that programs were not to be limited by sections 2.12, 28.1.1 and 29.0.2, the Federal government has generally interpreted these Sections to mean that

Cree and Inuit projects have to fit into existing programs, and have to compete for limited economic development funds with other Indian and Inuit communities in Quebec.

This difference in interpretation was one of the main reasons that the Joint Economic and Community Development Committee, established under section 28.8, never functioned effectively.

b) Cree Economic Development

The Agreement allows, subject to feasibility studies, for the creation of three Cree Associations; a Cree Trappers' Association, a Cree Outfitting and Tourism Association and a Cree Native Arts and Crafts Association. Canada and/or Quebec are to assist the Cree with funding and technical advice in establishing these Associations.

The Crees, in their submission, indicate that the budget required for these three associations is $6 million yearly. They gave no detailed breakdown of this figure. The Crees maintain that they did not make strenous efforts regarding funding the associations in the past because they were discouraged by Canada's overall attitude in implementing Section 28.

The Cree Trappers Association, as provided for in Section 28.5, began functioning after a feasibility study had been carried out. Canada and Quebec funded the study and the setting up of the program. To date the Crees have not finalized their proposal for a feasibility study of a Cree Outfitters and Tourism Association, so it is unclear if, and when, such an association will be set up.

A Cree Native Arts and Crafts Group existed before the Agreement, and this organization will form the basis for the

Cree Native Arts and Crafts Association. The Cree Arts and Crafts group is receiving $50,000 annually to support their organization.

Section 28.12 of the Agreement stipulates that Canada and Quebec will provide, "within the scope of services and facilities existing from time to time", technical and financial assistance to the Crees in establishing and running business ventures. Canada has interpreted this section to mean that the Crees are eligible for whatever assistance and funding is generally available to Indians, and has relied on existing personnel and programs to fulfill its obligations. The Crees indicate that they do not have easy access to government programs that provide general assistance for business ventures.

Cree entities and individuals are eligible for economic development assistance from the Quebec region of DIAND, but they have made limited use of this source of funds. Moreover, the Region's economic development budget has been cut by inflation and budget cuts. The Region informed the review team that they can consider funding of small projects, but that they did not have any money for major projects, which would have to be considered in Ottawa. This situation would be true for any Indian or Inuit group.

While the Region indicates that they had been willing to assist the Crees in any manner possible to find funds and technical assistance, both from the Department and outside the Department, two problems existed. First, the Crees made it clear, Regional officials contend, that they did not want any assistance unless they specifically asked for it and they have not done so. (On the other hand the Crees maintain that they knew no funds were available.) Second, if they had asked for funds for large projects there would have been difficulties because of the magnitude of their proposals, and because programs such as special ARDA are not available in Quebec. Special ARDA, which is delivered through the Department of Regional Economic Expansion (DREE) requires a Federal-Provincial Comprehensive Development Agreement, which has not been negotiated.

The absence of native orientated DREE programs in James Bay and Northern Quebec area was a complaint of both the Crees and Inuit. Both argued that DREE had funded other projects in the area, but up until recently had done nothing for natives.

c) Inuit Economic Development

The Inuit argue that the type of enterprises that they have been setting up through subsidiaries are the type of projects that would ordinarily have been eligible for start up and infrastructures grants from DREE, but such grants are not available in Northern Quebec. The Inuit are asking for assistance with start-up costs, that is, the increased costs associated with developing infrastructure in the North, which to date they calculate has cost them $3.7 million.

At present the subsidiary companies established by Makivik to promote economic development have severe cash flow problems. The prolonged payment period for compensation funds and the excessive cost of carrying out projects in the North have resulted in the amount of funds available for new development being quite limited.

The Eskimo Loan Fund operated by DIAND is not large enough to cover all the "start-up" costs requested by Makivik, and, in any case, it is unlikely that the "start-up" costs would be eligible for funding by the Fund.

Makivik rightly argues that they should not have to use as much of the compensation funds for economic development projects as they have, and that DREE grants should be available for such projects in Northern Quebec to offset the high costs of starting businesses in the North, Makivik did make application to DREE Indian Affairs and Transport Canada for such grants when the projects were undertaken but were told that their projects did not meet the funding criteria in use at the time.

d) Transportation Infrastructure

Section 28.16 provides for continuing negotiations between Quebec, Canada and James Bay Crees for the construction and maintenance of access roads to Eastmain, Paint Hills and Rupert House. A study completed in May 1977 estimated the costs for these roads to be $92 million. (The Crees strenuously disagree with the conclusions of this study and maintain that a road program, at a reasonable cost, is feasible.)

Negotiations on the access roads broke down because, apparently, of Quebec's insistence that the roads, including those sections on Cree controlled Category IA lands, be open to the public.

e) Training Needs

Whatever advances are made in the area of economic development, they will be of very little benefit to the Inuit and Crees if there are no adequate programs to train people to acquire the skills to enable them to be employed in economic development projects. The Inuit pointed out to the review team that it is an ironic and sad fact, that at present, even in Makivik sponsored projects few Inuit are employed. They simply do not have the skills necessary to participate.

Makivik, in cooperation with the Kativik Regional Government and the Kativik School Board, is currently developing a plan for the establishment of an Inuit community college to be located in Northern Quebec. The primary function of the proposed institution would be to provide manpower training especially suited to the particular cultural and economic needs of the Inuit. It is clear that this type of comprehensive approach to economic development is long overdue.

Recent initiatives by CEIC have begun to move in the direction of a comprehensive strategy for training. Prior to the signing of the Agreement, CEIC operated its programs in James Bay and Northern Quebec through the offices of DIAND and other agencies. With the Agreement, CEIC had to develop a development strategy for the North as well as open offices and train Inuit employees. This has recently been completed and CEIC believes that they should now be in a better position to meet Inuit needs.

There seem to be a number of problems in developing training programs for construction trades, the standards for which are provincially controlled. Some of the problems stem from the difficulties experienced by Crees and Inuit in gaining access to apprenticeships in the skilled construction trades.

The Interim Joint Committee set up under 29.0.27, to coordinate training programs offered by Quebec and Canada, functioned until 1980, when its responsibilities were transferred to the Kativik Regional Government, as was contemplated by the Agreement.

E. Comments/Summary

The clear intent of Sections 28 and 29, and for that matter the overall Agreement, was to assist the Crees and Inuit in taking advantage of opportunities to achieve economic development in a manner consistent with their cultural and social values. After reviewing the implementation of these Sections, it is clear that the rate of Cree and Inuit economic development has been slow. This is particularly evident when it is viewed in the context of the expansion of economic activity in the north of Quebec resulting from the James Bay Project. It would appear that the Crees and Inuit are receiving very little economic benefit from the developments occurring on their doorsteps.

The lack of economic development appears to stem less from any failure to implement the provisions of Sections 28 and 29, than from a failure by all the parties to the Agreement to work out a comprehensive and coherent development strategy for James Bay and Northern Quebec. While all the initiatives and programs specified in the Agreement are useful and important in themselves, they will have little impact on economic development unless they are carefully woven into such a strategy.

Comprehensive development strategies with special emphasis on the needs of native people have been developed, and are being implemented in other northern areas of Canada through the mechanism of long range development agreements, entered into by provincial and territorial governments and Canada. It is ironic that the Crees and Inuit, who appear, on the basis of the letter and spirit of the Agreement, to perhaps have a greater claim than others to such development assistance have as yet not received any significant help. This is an urgent problem which deserves immediate attention by all the parties to the Agreement.

It is critically important that, whatever development strategies are eventually adopted, they be integrated with a comprehensive and culturally appropriate manpower training system. Serious consideration should be given by all the relevant authorities to proposals such as Makivik's community college initiative. Past experience has proven that institutions such as those proposed by the Inuit, for example the former Inuit training centre in Churchill, Manitoba, have been of considerable benefit, not only with regard to economic development, but political and cultural development as well.

If a DREE initiative is not possible, special efforts by DIAND and other relevant Departments should be undertaken.

5.2.4 Core Funding: Cree

A. Issue

The Crees maintain that, pursuant to Section 28.15 of the Agreement, Canada has a legal obligation to provide CORE funding to the Cree Regional Authority (CRA) and the Cree local governments.

B. Provisions of the Agreement

Section 28.15 of the Agreement states:

> "Canada shall, subject to departmental directives existing from time to time, provide Cree local governments and the Cree Regional Authority with CORE funding for the conduct of their internal administration and other funds to cover administrative costs of governmental programs delegated to the said governments and/or Authority."

Sections 11A.0.5 and 11A.0.6 outline the role and powers of the CRA:

11A.0.5 The Cree Regional Authority shall have the following powers:

a) the appointment of Cree representatives on the James Bay Regional Zone Council;

b) the appointment of representatives of the Crees on all other structures, bodies and entities established pursuant to the Agreement;

c) to give a valid consent, when required under the Agreement, on behalf of the James Bay Crees.

11A.0.6 In addition to the above powers, the said Cree Regional Authority may also be empowered to coordinate and administer all programs on Category I lands of the James Bay Crees if said coordination and administration are delegated to it by one or more of the Cree bands or the corporations which may be established pursuant to Section 9 of the Agreement or by one of the said Cree community corporations.

C. Cree position

The Crees argue that Section 28.15 obligates Canada to provide CORE funds to cover all costs of "internal administration" at the local level, and at the level of the Cree Regional Authority.

For the 1981/82 year the Crees estimated the CORE costs of the CRA to be $2.2 million, out of an overall budget of $3.4 million. CORE funding for the CRA would be expected to continue at this level, with adjustments for inflation and changes in CRA responsibilities. The Crees are also claiming reimbursement of CORE expenses incurred by them from the date of the establishment of the CRA.

The Crees have not made any specific claim regarding the funding of the Cree local governments (band councils), except to state that the level of funding currently received by these entities is not adequate, especially in view of their added responsibilities stemming from the Agreement and that it was the intention of the Agreement to provide a "special" core funding program for band councils. The Crees also maintain that the CORE funding requirements of the Cree local governments will increase even more when the proposed Cree/Naskapi Act comes into force.

The Crees base their argument essentially on the spirit and intent of the Agreement, and argue that Canada has adopted a legalistic and narrow interpretation of Section 28.15. In a letter to the Honourable Francis Fox, Secretary of State, January 9, 1981, the Crees summarize their argument as follows:

> "At the time that the James Bay and Northern Quebec Agreement was signed, there was not in Canada under any Government Agency, a program for core funding such an Agency (CRA) since no other of its kind existed at that time. In signing the Agreement, Canada had either:
>
> 1. an intention in good faith to provide for the operation of this organization; or
>
> 2. the words in the Agreement were intended to be deceptive".

D. Review of Issue

DIAND has interpreted Section 28.15 to mean that existing CORE funding programs would be applied to the CRA and the Cree local governments on the same basis as they were applied to other Indian bands and organizations, similar to the CRA, across the country. This interpretation appears to be backed by Section 28.1.1 which specifies that the programs noted in Section 28 will be applied according to established criteria, and applied to ongoing programs of general application.

a) Band CORE Funding

Cree local governments have received CORE funding at the same level and subject to the same criteria as other Indian bands. The Departmental program directive dealing with CORE funding specifies that CORE funds are provided to defray such basic costs as operation and maintenance of a Council office, honoraria for Band chiefs and councillors, professional advice and band contributions to district council operations. CORE funding is calculated on a per capita basis and is not directly related to the actual costs incurred by a band. The band receives the funds as a grant and are free to expend them as they see fit for the specified purposes.

The CORE funds received by the eight Cree bands in 1977-1981 are:

1977-78:	$254,900
1978-79:	$258,700
1979-80:	$297,200
1980-81:	$300,000

Cabinet approval was received in June to increase the CORE funding available to bands by 33% and the Cree bands will be entitled to this increase.

Under the terms of the proposed Cree/Naskapi Act, which is being negotiated pursuant to Section 9 of the Agreement, the Cree bands will assume greater powers than currently exercised by bands operating under provisions of the Indian Act. The Department is cognizant of these increased responsibilities and the need for increased funds to carry them out. The Crees have put forward estimates on the costs of the proposed legislation, and

Department negotiators are discussing these with them as part of the overall process of negotiating the proposed Act.

The requirement under Section 22 to appoint Cree Local Government Environment Administrators will also entail increased administrative costs for the Cree bands. The Department of the Environment is currently studying a Cree proposal to fund the administrators program.

b) CRA CORE Funding

The Department has maintained that the only type of CORE funding for which the CRA is eligible is that available to "district councils" under the provision of the Department's D-2 Program Circular. Under that circular, district councils can receive a small start-up grant in their first three years of operation, after which the circular specifies that the Department will not fund district councils, although band councils have the option of transferring their CORE funds to a district council.

Department officers involved in the negotiation of Section 28 told the review team that, during negotiations, it was made very clear to the Crees that the entitlement of the CRA would be limited to the provisions of circular D-2. The Crees were given copies of the D-2 circular to ensure that there would be no doubt concerning the provisions applicable to the CRA. According to Canada's negotiators it was very clear that, unless the policy on the CORE funding was changed the entitlement of the CRA was very limited.

The limitations on the extent of CRA CORE funding may be explained, in part, by a perception, held during the negotiations by both the Crees and Canada, that the role of the CRA would be fairly limited and costs would be minimal. Neither party fully realized the extent of the workload that the CRA would have to handle in order to fulfill its mandate.

Section 28.15.1 does not specify which Department is responsible for providing CORE funding. On several occasions the Crees have argued that this section refers to the CORE funding program provided by the Department of the Secretary of State, and on that basis, attempted to negotiate a CORE funding agreement with that Department. Although the Secretary of State reached a tentative agreement with the Crees, these negotiations were ended in January 1981 on the grounds that the CORE funding obligation was a clear responsibility of DIAND.

The CORE funding referred to in Section 28.15.1 is clearly intended for the support of regional and local governments, whereas the CORE funding provided by Secretary of State is intended for the use of political organizations, such as provincial or territorial native associations. Canada's negotiators maintain that, although the Section does not specify the Department responsible, it was clearly understood that the reference to "departmental directives" was a reference to those directives of the Department of Indian Affairs, specifically Program Circular D-2, which had been placed before the Cree negotiators.

Although the program circulars concerning district councils and CORE funding appear to have been rigidly applied to the CRA, this does not appear to be the case regarding district councils in other areas of the country. A 1980 DIAND study of district councils, which identified 43 such organizations across the country, indicates that only 6 of the 43 councils surveyed complied with the essential criteria set out in the program circulars. Very few of the existing councils applied for, or received, the start-up CORE funding available to them under the program circulars, and few receive CORE funding contributions from their constituent bands. The study indicates, however, that these district councils receive substantial Departmental funding to cover CORE type costs through various ad hoc arrangements. The conclusion of the study was that, although the official DIAND policy is to provide only limited CORE funding to district councils, this policy has not often been followed.

c) Inuit CORE Funding

The Inuit have raised concerns about the lack of CORE funding for the Inuit villages and the Kativik Regional Government. The Inuit situation is different from that of the Crees because there is no provision in the Agreement for Canada to provide CORE funding to the Inuit. Inuit local and regional governments come under Quebec jurisdiction and receive funding from Quebec for the type of expenditures usually covered by CORE funding.

The Inuit community councils received CORE funding until 1979/80, when these Federally constituted bodies were replaced by non-ethnic municipalities incorporated by Quebec. The fact that the new municipalities are non-ethnic makes it impossible for Canada to provide CORE funding unless the existing program criteria and directives are substantially changed.

The Inuit have requested that Canada provide CORE funding to the 15 Inuit Land Holding Corporations which are ethnic entities, and which perform certain local government functions relating to the management of Inuit lands, but which are not local governments as such.

The issue of the applicability of the CORE program to the Land Holding Corporations is basically an operational question and should be dealt with in that context.

d) Secretary of State Funding Programs

Although the Secretary of State's CORE funding program is not applicable to the Cree and Inuit government entities, their political organizations, the Grand Council of the Crees (of Quebec) and Makivik Corporation, both receive funds from this source to defray administrative expenses.

The Secretary of State's Migrating Native Peoples Program funds Friendship Centres used by James Bay Crees in Val d'Or, Chibougamau and Senneterre. Administrative and Training funds provided for these centres in 1980-81 totalled $188,055. The Crees maintain that Canada has not provided sufficient funding for the centres and estimate that $2 million a year should be allocated by Canada.

The funding of these centres is in accordance with Section 28.14 of the Agreement:

> "Quebec and Canada shall continue to the extent possible funding and assistance for facilities, programs, services and organizations such as Friendship Centres existing or which may exist from time to time outside Cree communities for the purpose of assisting Cree persons residing, working or temporarily in non-native communities or in transit.

Secretary of State is, however, willing to consider, in accordance with existing program criteria, Cree proposals regarding the Friendship Centres program.

E. Summary/Comments

As is the case with many other provisions of the Agreement, and especially those in Section 28, the difficulties in implementing Section 28.15.1 stem more from honest disagreements as to the meaning and spirit of the Agreement than from any attempt to deny the native parties rights or benefits to which they are entitled.

After carefully studying the history of the dispute over funding the CRA, it appears clear that, although the original intention may have been to fund the CRA in accordance with the circular on funding district councils, subsequent events have made this position untenable. The review team is of the view that a special CRA CORE funding program is necessary.

5.2.5 Airstrips

A. Statement of Issue

The Crees and Inuit claim that Canada has failed to meet its obligations respecting the construction of airstrips, as set in the letters of undertaking to the Inuit and Cree leaders dated November 15, 1974 and signed on behalf of Canada by the then Minister of Indian Affairs, the Honourable Judd Buchanan.

B. Provisions of the Agreement

The Federal letters of undertaking set out the following undertaking with regard to the construction of airstrips

> "Canada undertakes to construct airstrips for the permanent Inuit and Cree communities in accordance with the criteria established from time to time for the construction of airstrips in such communities."

C. Position of the Native Parties

The Crees and Inuit maintain that the letter of undertaking clearly obligates Canada to construct airstrips in Northern Quebec. In their view Canada has not fulfilled this obligation.

D. Review of Issue

The letters of undertaking clearly indicate Canada's intention to construct airstrips. Insofar as no precise time limit is imposed on the achievement of this aim such construction would normally be expected to take place within a reasonable delay.

Until recently, no comprehensive program was carried out or planned by Canada. Problems relating to the status of Cree and Inuit lands and program cutbacks impeded the fulfillment of Canada's undertaking. At present, air service facilities in the Inuit and Cree communities are significantly inferior to the facilities in similar remote communities in the Territories and the other Provinces and, in many cases, do not conform with minimum standards of safety and operation prescribed by Canadian Transport Commission regulations.

An interim program initiated in 1976/77 resulted in Transport Canada expending $454,000 between 1976/77 and 1980/81 for airstrips in the Cree and Inuit communities. This compares to an average cost of $1.-2.5 million per airstrip for comparable communities in the N.W.T.

In recent months Transport Canada has begun discussions with the Province of Quebec the Inuit and the Crees on a proposal for a Federal-Provincial cost-shared program for the construction of airstrips in the Inuit communities. The cost estimate for the program, which would begin in 1983/84 and be spread over a period of up to 10 years is $37 million (1981). It is proposed that the program be cost shared 50/50 by Quebec and

Canada. It is anticipated that final agreement can be reached on this program in the near future.

The vital necessity of adequate airstrips for the Cree and Inuit villages is beyond doubt. For all the Inuit communities, and most of the Cree communities, air transportation is the only quick access to the outside world. Air transport is relied on for everything from the evacuation of critically ill patients to visiting friends or family in other communities. The lack of adequate airstrips greatly compounds the already formidable difficulties of living in remote communities. In addition the restriction on the size of aircraft that can land on the existing strips significantly adds to the cost of all goods brought in by air.

E. Summary/Comments

Canada has not yet carried out the undertakings which it assumed pursuant to the Federal letters of undertaking. Recent initiatives indicate, however, that this deficiency may soon be remedied.

5.2.6 Administration of Justice

A. Issue

The Crees charge that Canada has done little or nothing to implement the provisions of the Agreement in regard to the administration of justice.

B. Provisions of the Agreement

Section 18: Administration of Justice (Crees); and Section 20: Administration of Justice (Inuit) obligate Canada and Quebec to implement, in consultation with the native parties, various measures to adapt the criminal justice system to the circumstances, usages, customs and way of life of native parties.

Both sections provide for:

a) consultation with the native parties on matters such as: legislative amendments, appointment of justices of the peace, decisions relating to places of detention, aftercare, and rehabilitation programs;

b) access of native defendents to interpreters;

c) employment of native people in the criminal justice system; and

d) establishment of judicial advisory committees.

C. Position of the Native Parties

The Crees have indicated that they believe Canada has done little to implement its obligations respecting the administration of justice pursuant to Section 18 of the Agreement. The Inuit indicated that they understood Canada's obligations under Section 20 to be ones which they were obliged to fulfill on their own initiative without any further requests by the Inuit.

D. Review of Issue

Canada's responsibilities under these two sections fall under the administration of the Departments of Justice and the Solicitor General.

Section 18.0.37 provides for the establishment of a judicial advisory committee, composed of representatives of the Crees and Quebec. One function of this committee is to advise the Federal Department of Justice on legislative amendments which may be required to give effect to provisions of this Section. The Department of Justice has been awaiting the recommendations of this Committee on the required amendments to the Criminal Code.

The Inuit have not yet made a request or recommendations for the modifications of the Criminal Code to suit Inuit customs, or to allow for 6 jurors in the territory of Abitibi, Mistassini and Nouveau Québec.

E. Summary/Comments

Although, under the Agreement, Quebec is responsible for the administration of Justice, the Department of the Solicitor General believes that there are various areas where Federal participiton is necessary or would be helpful. The Department is undertaking a general examination of existing programs and policies for natives in relation to its responsibilities in the area of criminal jurisdiction.

The Departments of Justice and the Solicitor General are ready to discuss with the native parties and Quebec the action required to fully implement Sections 18 and 20.

5.2.7 Port Burwell

A. Issue

The Inuit claim that the Inuit of Port Burwell were forced to leave their community as a result of Canada's failure to fulfill its obligations pursuant to the Agreement. They are seeking the re-establishment of the Port Burwell community or the negotiation of alternative arrangements.

B. Provisions of the Agreement

The community of Port Burwell, located at the northwestern tip of Ungava Bay, is part of the Northwest Territories. However, because of the traditional ties between this community and the Northern Quebec Inuit, it was decided to include Port Burwell within the general provisions of the Agreement. In addition, special provisions were made in the Agreement to deal with certain problems resulting from the special status of Port Burwell.

For purposes of the Agreement, an Inuit of Port Burwell is deemed to have been born or to be born in Quebec and if ordinarily resident in Port Burwell, is deemed to be ordinarily resident in Quebec. The provisions of Section 3 (Eligibility), Section 6 (Land Selection - Inuit of Quebec), Section 7 (Land Regime Applicable to the Inuit), Section 24 (Hunting, Fishing and Trapping), Section 25 (Compensation and Taxation), and Section 27 (Inuit Legal Entities) apply to the Inuit of Port Burwell.

Section 2.3 stipulates:

> "Canada or the Government of the Northwest Territories, as the case may be, will continue to be responsible for providing programs and services to the Inuit who are ordinarily resident in Port Burwell in accordance with criteria that may be established from time to time."

Section 15, schedule 1(4) specifically provides that:

> "Agencies of ... and Canada will immediately undertake to improve health and social services for persons residing in the communities of Aupaluk (and) Port Burwell..."

C. Inuit Position

The Inuit contend that the Inuit of Port Burwell are unable to enjoy the benefits provided for them because they were evacuated to other Inuit communities along the mainland of Quebec. The Inuit argue that the major reason for the evacuation was Canada's failure to improve health and social services for Port Burwell. They contend that the availability of an emergency airlift service was illusory since the community could not be reached by air for lengthy periods due to weather and landing conditions. They also argue that the evacuation was against the wishes of the Inuit living in the community, and no provision was made by Quebec or Canada to help offset the pressure for housing and social services in communities which received the Port Burwell residents.

The Inuit demand that Canada redress the damages suffered by the Inuit of Port Burwell because of their evacuation and "restore them the meaningful exercise of their rights under the Agreement."

D. Review of Issue

The Federal Government and the Inuit have different views of the cause and outcome of the evacuation of the Port Burwell community in February 1978, and the review has not turned up any new facts that will clarify this issue.

The Inuit contend that the reason that Port Burwell had to be evacuated was because the Department of National Health and Welfare had not provided adequate health services, giving the closing of the nursing station as an example. They also argue that the Government of the Northwest Territories (GNWT) pressured the Inuit of Port Burwell to leave.

On the other hand, Health and Welfare state that Port Burwell continued to have adequate health services, even though the nursing station was closed, since there were regular visits from medical staff and airlift service for emergency cases. The Government of the Northwest Territories (GNWT) are firm that they were only reacting to requests from the Inuit of Port Burwell who wanted to leave.

Since February of 1978 there have been a number of meetings concerning the situation at Port Burwell between representatives of DIAND, GNWT and the Inuit, during which each side presented options for solving the impasse. The Federal Government has been awaiting a response from the Inuit to a July 1978 letter from the then Minister of DIAND, J. Hugh Faulkner. The letter outlined a number of options available for the Inuit of Port Burwell which the Government wished to discuss with the Inuit.

The options outlined were:

1) "That the Port Burwell people return to Port Burwell, N.W.T." The letter describes the services that would be provided by the GNWT and National Health and Welfare under this option.

2) "That the Port Burwell Inuit move to Bell Inlet, P.Q. from the communities in which they now live". This option would require the participation of Quebec.

3) "That the Port Burwell Inuit remain in the Quebec Communities in which they are now living". This option would allow for discussions between Makivik, Canada and Quebec concerning the benefits of the Port Burwell Inuit under the Agreement.

The Inuit, in a meeting in January 1981, indicated that the Port Burwell Inuit would still like to return to Port Burwell if an airstrip were built and the nursing station reopened. Imaqpik Fisheries, owned by Makivik, is considering the possibility of using Port Burwell as a northern base for its fishing operations. At that meeting Federal officials indicated to the Inuit that a response to the options outlined in Mr. Faulkner's letter could form the basis of renewed discussions to resolve this issue. The Inuit are still in the process of preparing their response.

E. Comments/Summary

Whatever the true facts are concerning the final evacuation of Port Burwell, it is clear that the evacuation has prevented the Inuit of Port Burwell from fully enjoying the rights and benefits, and especially the land rights, they received pursuant to the Agreements. The government should stand ready to negotiate a resolution of this problem when the representatives of the Inuit of Port Burwell indicate they are ready to do so.

5.2.8 Education

In their presentations to the Standing Committee, the Crees and Inuit made reference to problems regarding the education systems established pursuant to Sections 16(Cree) and Section 17(Inuit). Reference has already been made, in section 5.2.1(d.f.), to the very serious problems concerning the physical condition of Inuit school buildings. Discussions with the Inuit and Crees indicate, however, that recent developments, especially with regard to funding and program design, have, in their view, created serious problems regarding the operational side of the education system.

The history of minority ethnic and linguistic groups in Canada has proven time and time again that the key to cultural survival is participation in and influence over the education system. This essential truth is recognized in the James Bay Agreement. Sections 16 and 17 establish Cree and Inuit School Boards which, although they come under Quebec jurisdiction and are essentially similar to other Quebec school boards, are endowed with special powers and a special mandate to ensure that education programs are culturally relevant. The Agreement specifically provides for instruction to be carried out in Cree and Inuttituut and endows the Boards with special powers regarding curriculum development and the establishment of programs based on Cree or Inuit culture and language.

The operational and capital budgets of the School Boards are funded jointly by Canada and Quebec with Canada paying 25% of the Inuit budget and 75% of the Cree. Despite this financial involvement, the Agreement limits Canada's involvement in the management and oversight of Cree and Inuit education. This responsibility rests primarily with Quebec.

On the basis of the overall review, it is clear that the success of the education system is critical to the successful implementation of almost all aspects of the Agreement. It is essential that all the parties to the Agreement cooperate to ensure that the legitimate educational goals of the native parties are achieved.

5.3 IMPLEMENTATION COSTS AND COORDINATION

5.3.1 Compensation Funds

A. Statement of Issue

The Crees and Inuit contend that they have been forced to use their compensation funds on programs, services, negotiations, legal fees and other matters which should have been funded by Canada and Quebec as part of the overall implementation of the Agreement. The native parties maintain that the compensation funds were not intended for this purpose and they are seeking reimbursement of the funds spent.

B. Provisions of the Agreement

Section 25 of the Agreement provides for the following compensation payments:

a) $150 million "basic compensation" consisting of:

  - $75 million to be paid over 10 years beginning 1976, with Canada paying $32.75 million and Quebec $42.25 million
  - $75 million to be paid by Quebec as Hydro-Québec royalties over a 21 year period ending in 1997.

b) $75 million "compensation for future development"

  - to be paid by Quebec in the form of provincial debentures over 5 years ending in 1980.

c) compensation in respect to non-status Cree beneficiaries and the Inuit of Port Burwell based on formulae set out in Sections 25.1.15 and 25.1.16 (approximately $4 million)

   - to be paid by Quebec and Canada in the same proportions as the first $75 million.

d) $3.5 million to cover negotiations costs

   - to be paid by Quebec.

The total compensation is approximately $232.5 million. Canada is responsible for paying $34 million and Quebec $198.5 million. The compensation funds are divided between the Crees and Inuit on the basis of their respective populations, approximately 60% Cree, 40% Inuit, with the Cree receiving approximately $137.4 million and Inuit $95.1 million. To date both native parties have received approximately 2/3 of the compensation payments payable to them. The compensation payments are exempt from taxation, but interest on earnings from the compensation funds is subject to tax laws of general application.

Sections 26 and 27 provide for the establishment of two legal entities, the Cree Board of Compensation and the Makivik Corporation, to receive and administer the compensation funds on behalf of the Crees and Inuit.

Section 26.0.4 of the Agreement specified that the Cree legal entity will be established for the following purposes:

"a) The reception, administration and investment of the Compensation payable to the Crees, pursuant to the provisions of the Agreement;

b) the relief of poverty, the welfare and the advancement of education of the Crees;

c) the development, the civic and other improvement of the Cree communities within the Territory."

Section 27.0.4 provides the following purposes for the Inuit entity:

"a) to receive the Compensation and to administer and invest the Compensation and the revenues therefrom;

b) the relief of poverty, the welfare and the advancement of education of the Inuit;

c) the development and the improvement of the Inuit communities."

Sections 26 and 27 also provide general restrictions, similar to those applying to trust companies, on the manner in which the compensation funds can be invested.

C. Position of the Native Parties:

The Crees and Inuit consider the compensation funds to be a "sacred trust" for use by "future generations". In their view the compensation funds were intended to compensate them for the surrender of the aboriginal rights of the present and all future generations of their people. They expressed a very strong feeling that the funds were intended to be used in such a way as to ensure the cultural and economic vitality of their people for many generations to come. The native parties object very strongly to being forced to use compensation fund capital or revenue to provide programs and services, which should rightfully, in their view, be supplied by governments.

The Inuit clearly expressed their views on this matter in their brief to the Standing Committee:

> "In the absence of a clearly defined implementation process and of the designation of an adequately funded implementation body, native peoples have

> been obliged to expend considerable portions of the monetary compensation received under the Agreement just to secure their entitlement to, much less the actual receipt of, the rights and benefits promised them under the Agreement."

The representatives of the Crees and Inuit felt that the compensation funds were being used against them in that the government now treated them as "rich Indians" who no longer required assistance or funding from the government. It was the clear understanding of the native negotiators that the payment of compensation funds would not affect the right of Cree and Inuit people to receive government programs and services on the same basis as other Indians and Inuit and/or citizens of Quebec and Canada.

The Crees claim that, to date, they have spent approximately $24 million on the implementation of various sections of the Agreement, with approximately $9 million spent on housing and infrastructure and $15 million on other aspects of implementing the Agreement. The Inuit estimate that they have expended $9.6 million on various areas of implementation which, they believe, should be funded by Quebec and Canada.

These expenditures have been funded, almost exclusively, from the revenue earned from the compensation funds and not the capital itself. The Crees report, however, that in recent months they have also used part of their capital funds.

The native parties argue that sub-sections b) and c) of Sections 26.0.4 and 27.0.4, which appear to give the native corporations a wide mandate, were included primarily to ensure the tax exempt status of the corporations and not to force them to replace the government as the principal funders of social and economic programs. They maintain that these sub-sections should not be viewed as an indication that the Crees and Inuit anticipated spending large amounts of their compensation funds on programs and services usually provided by the governments.

The native parties are requesting that both Canada and Quebec reimburse them for the compensation funds they have expended. The purposes for which the Crees and Inuit have expended compensation funds fall into four main categories:

a) Pre-Agreement negotiation costs

The native parties have argued that Canada should forgive the loans made to them during the pre-Agreement negotiations.

b) Post-Agreement negotiation costs

The native parties claim that many of the provisions of the Agreement were left vague because of the pressure to sign the Agreement. They argue that it was understood during negotiations that several sections of the Agreement would require further intensive negotiation in order to implement the Agreement.

c) Implementation Costs

The Agreement provides for Cree and Inuit representation on a wide variety of bodies established to oversee implementation of various provisions of the Agreement. The native parties feel that Canada and Quebec should fund their participation in the implementation system. They claim that they have been required to expend large sums in order to effectively participate in the implementation process.

d) Program costs

The native parties claim that they have been forced to fund program costs, for purposes such as housing and infrastructure, which should have been assumed by Canada and/or Quebec.

D. Review of Issue

a) Pre-Agreement negotiation costs

Since the signing of the Agreement both native parties have urged Canada to forgive the negotiation loans made to them during the negotiation of the Agreement. Canada has refused to do so on the grounds that the conditions of these loans, including the condition that they would be repaid out of compensation funds, were clear at the time the loans were made and the native parties accepted them on that basis. Moreover, all funds provided to other native claimants since 1975 have also included this repayment feature. The repayment schedule for the loans has, however, been renegotiated and this was intended to compensate the native parties, in part, for the ongoing costs of post-Agreement implementation negotiations.

b) Post-Agreement negotiation costs

The Agreement makes no provision for funding Cree and Inuit participation in post-Agreement negotiations.

It is true, nevertheless, that both native parties have been required to participate in lengthy, detailed, and costly negotiations especially on matters such as the proposed Cree/Naskapi Act, the Northeastern Quebec Agreement negotiations, and land selection negotiations. These negotiations were a direct result of the Agreement, and failure of the native parties to participate in them would have made it impossible for them to realize many important rights and benefits.

c) Implementation costs

Some sections of the Agreement provide for government or shared government-native funding of the various boards, committees, corporations and other agencies established to manage and oversee the implementation of specifc provisions of the Agreement.

It would appear, in retrospect, that the general feeling during the negotiations was that the Agreement provided sufficient specific funding provisions to cover most of the reasonable costs of the Crees and Inuit. After six years of experience with the implementation system, it is now clear that all the parties to the Agreement underestimated the costs inherent in the natives' participation in the implementation process. (On the other hand the Crees maintain that they expected the governments to provide a much higher level of funding assistance than has been the case.) These costs stem, both from the actual expenses of attending the numerous meetings which are held, and from the expenses involved in properly preparing for meetings.

Many of the bodies established to implement the Agreement are involved in technical and complex matters such as environmental assessment and the management of the hunting, fishing, and trapping regimes. It is generally agreed that in order for the native parties to meaningfully participate in the management of such matters it is essential that they have access to expertise, such as legal and scientific advisors, required for them to make informed decisions. It is evident that acquiring such expertise has often been costly and has resulted in a significant financial outlay by the Crees and Inuit.

d) Program costs

This issue is dealt with in Sections 5.1 and 5.2 of this Report.

E. Summary/Conclusions

It is apparent that the complexity and cost of implementing the various programs, services, and entities established by the Agreement was underestimated by all the parties to the Agreement. This has resulted in the Crees and Inuit assuming a greater financial commitment and workload than was expected in 1975. The Inuit and Crees have had to expend significant sums of their compensation fund revenues to ensure that the rights & benefits they were given pursuant to the Agreement were realized and protected.

Because the complexity of the Agreement was not foreseen the inherent expenses were not accurately forecasted and consequently the Agreement does not make provisions for dealing with this issue. Therefore, the issue should be approached not from the perspective of interpreting the Agreement but rather as a matter of ensuring that the Agreement is effectively implemented.

From a policy perspective it appears clear that while the Agreement makes some provision for the native parties to assume certain implementation costs it was not envisioned that native expenditures in this area would constitute a significant proportion of compensation fund revenues as is now the case. It is doubtful that an Agreement, such as the James Bay Agreement, can be fully successful if the burden of financing implementation falls so heavily on the native parties.

5.3.2 Implementation Process

A. Issue

The native parties contend that Canada's overall management of the implementation process has been a major impediment to their achievement of the rights and benefits to which they are entitled under the Agreement.

B. Provisions of the Agreement:

The Agreement establishes no overall process for coordinating and overseeing the implementation of the Agreement although there are numerous committees and agencies charged with implementing specific provisions.

The Joint Economic and Community Development Committee (S.28.8) established for the Crees and the Interim Joint Committee established for the Inuit (S.29.0.33) have relatively broad mandates but still fall short of an overall coordination role.

C. Position of the Native Parties

a) Crees

The Crees maintain that Canada has failed to establish the type of implementation procedures and mechanisms necessary to ensure that Federal obligations are implemented in a timely and efficient manner. They have expressed particular concern regarding: the need to clearly define and identify implementation responsibilities; appointment of senior officials to oversee Federal implementation; assignment of responsibility to the Privy Council Office for coordinating Federal implementation, and establishment of mechanisms to provide the "special" Parliamentary appropriations to which they feel entitled.

The Crees request that special legislation be adopted by Parliament to establish a formal implementation structure and to appropriate the special funds required to implement the Agreement. In their view legislation is necessary to ensure the permanency of the implementation structure established. The Crees did not present specific details on the mandate or makeup of the implementation structure they would like to see legislated.

b) Inuit

The Inuit advocate the establishment of a formal Implementation Committee composed in equal numbers of members appointed by the native people and the governments involved. In their brief to the Standing Committee the Inuit set out the following principles for the conduct of the proposed committee:

"a) the interpretation of the agreement in question in accordance with its spirit and intent;

b) the recognition of the special social and economic needs and conditions prevailing in the territory contemplated by the Agreement; and

c) the promotion of greater self-determination on a local and regional basis ..."

The Inuit believe that an Implementation Committee should have general responsibility for overseeing implementation and resolving disputes relating to implementation. While the Committee would normally be only advisory, the Inuit believe that in certain circumstances the Committee should have the power to make final binding decisions. The Committee as proposed would also be responsible for "... the coordination, review and finalization of all budgets for programs and bodies created or contemplated by an agreement, subject to the approval by Parliament of the necessary appropriations." In line with the Cree recommendations the Inuit propose that legislation be passed to provide for annual Parliamentary appropriations to fund all aspects of the Agreement.

It should be noted that the Crees do not support the idea of giving the Implementation Committee binding powers. They informed the review team that they prefer the option of keeping open access to the courts as a last method of conflict resolution.

D. Review of Issue

a) Implementation mechanisms

Canada's responsibilities regarding implementation arise at three distinct levels.

i) Internal Departmental coordination

The Federal departments with obligations under the Agreement have coordinated their responsibilities in various ways. The Department of the Environment established a special office to oversee Agreement implementation while other Departments appear to have relied on existing regional offices in Quebec. In most cases decisions on major policy issues have been referred to Ottawa headquarters' offices for decision.

In DIAND's Quebec Region, the coordination of matters relating to implementation of the Agreement is directed by the Associate Regional Director-General, who is a senior executive officer. Although the Associate Director-General does not have direct control over program officers, he works in close cooperation with the Regional Director-General and the Director of Operations, who are the senior line managers in the Region.

DIAND's implementation coordination appears to have functioned successfully in dealing with routine implementation matters. Problems have arisen in resolving difficult issues arising from the interpretation of the Agreement. It would appear that there has been insufficient capacity built into the system, especially at Headquarters' level, to effectively deal with such issues.

Responsibility for implementing program responsibilities of the Agreement rests with the Indian and Inuit Affairs Program of the Department. In the early stage of the implementation process, the Office of Native Claims (ONC) was involved in overseeing all of Canada's implementation responsibilities, including DIAND program matters. This function was, however, gradually assumed by the Indian Program.

One of the major problems in coordination at the Ottawa level has been a lack of clear focus for decision-making on Agreement issues. As a result of re-organizations and changes in key personnel, it has not been possible, until recently, to establish, on an ongoing basis, one Headquarters' unit or individual who has a clear responsibility for liaising with the native parties and the Region to ensure that matters requiring Ottawa's participation are adequately and effectively handled. This situation was further complicated by the difficulty in determining whether a particular issue has a "program" matter or a matter with "policy implications" of concern to the whole Department or the Government. Due to this confusion, some matters have been referred to the Assistant Deputy Minister of the Indian and Inuit Affairs Program, while other responsibilities have been handled through the office of the Assistant Deputy Minister, Corporate Policy. The Claims Policy Committee chaired by the Deputy Minister dealt with some implementation issues but did not establish a clear mechanism to deal with implementation problems on an ongoing basis.

In recent months clearer lines of authority have been established by the official designation of the ADM, Corporate Policy, as the senior Ottawa official responsible for coordinating all aspects of the Department's involvement in the implementation of the Agreement. It is anticipated that this action will help to improve the Department's capacity to deal with implementation issues.

ii) Federal Inter-Departmental coordination

As noted above, in the early stages of implementation, the Office of Native Claims, which is headed by an Executive Director reporting to the Deputy Minister of DIAND, was given an overall responsibility for overseeing Canada's implementation responsibilities. This role was a logical outcome of the role that ONC played as chief Federal negotiator and coordinator during negotiation of the Agreement.

As chief Federal negotiator, ONC established an informal inter-departmental Steering Committee, chaired by Canada's senior negotiator and consisting of representatives from each Department involved in the negotiations. After the Agreement was signed, this Committee continued to meet in order to oversee and coordinate Canada's initiatives regarding the Agreement.

In the early stages it appears that this arrangement worked well. However, problems began to arise because some departments appeared to feel that the activities of the Committee, and ONC's role in chairing it, unduly impinged on their areas of jurisdiction. This problem probably resulted from the fact that, although it was assumed that DIAND would oversee Canada's implementation activities, this mandate was never clearly established, either administratively or legally and, therefore, DIAND had very little clout or even influence with regard to the activities of other departments.

Another problem which arose in the operations of the Steering Committee was the lack of participation by senior officials. Members of the Committee often had to refer back to their superiors before decisions could be reached.

The Steering Committee ceased functioning around the end of 1977, which coincided with the end of the transitional period specified in the Agreement. It was understood in the Department that, after that date, coordination responsibilities would shift to the Indian Affairs Program. However, no interdepartmental structure was established to replace the coordinating committee, although at the regional level informal contacts were maintained with the other departments.

The Interdepartmental Committee on Indian and Native Affairs, chaired by the Deputy Minister of DIAND and consisting of Deputy Ministers of departments dealing with Indians and native issues, dealt with some implementation issues but again no mechanism was established to handle such issues on an ongoing basis.

iii) Overall implementation coordination

The Agreement makes no provision for a forum to discuss the overall implementation of the Agreement. There are numerous committees and corporations which include representatives of the Crees and Inuit, Quebec and Canada. These committees have limited mandates and, despite the fact that some have worked well, insufficient effort has been made by the parties to give these committees a chance to perform as had been hoped. In any case, their existing limited mandate makes them incapable of dealing with overall coordination or resolving issues on which there are basic policy differences.

During the negotiations, the Inuit suggested the formal establishment of an Implementation Committee, but this idea was not included in the Agreement. The reasons for not establishing an Implementation Committee are unclear, but two important factors probably were: a fear that the Committee might impinge on exclusive areas of Federal, Provincial or native jurisdiction, and a reluctance to overburden the Agreement by establishing one more formal structure.

The proposal contained in the Inuit brief to establish an Implementation Committee was first made to Canada and Quebec early in 1979, 18 months ago and, at that time, the Deputy Minister of Indian Affairs indicated that, in principle, DIAND agreed with this idea and was willing to discuss it with the Inuit and Quebec. Quebec did not accept the proposal and consequently no progress could be made in establishing the Committee. Quebec has, however, agreed to participate on ad hoc tripartite committees.

The existing committee which comes closest to having a comprehensive mandate is the Joint Committee on (Cree) Social and Economic Development established under Section

28.8. This Committee met fairly regularly during the first years of the Agreement but has been dormant in recent years. The main difficulty in operating the Joint Committee appears to have been an inability to devise mechanisms for resolving disputes over major issues of policy and interpretation. On many issues the Committee was deadlocked and therefore ineffective.

An overall forum or structure for implementing the Agreement, given the proper spirit, could play an effective role in defusing many serious issues before they lead to confrontation and legal actions. It is clearly within the spirit of the Agreement to attempt to solve outstanding issues on the same basis and in the same spirit that the Agreement was negotiated.

b) Annual Report

The obligation in the James Bay and Northern Quebec Native Claims Settlement Act for Canada to submit an Annual Report on the implementation of provisions of the Agreement has not been carried out effectively. For various reasons relating to the two recent Federal elections and internal changes in DIAND, only one Report has been tabled since 1978. The native parties have been very critical of Canada's failure to submit the required Reports and have also expressed serious reservations about the contents of the Report that was issued.

It is recognized that the Annual Report could serve a very useful purpose in making Parliament aware of the record of progress in implementing the Agreement. Involving the native parties in the preparation of the Report would also be worthwhile.

During work on this report the Crees and Inuit were informed that the tabling of the next Annual Report would be delayed so that it could accurately reflect the findings of the Review and the discussions held with the native parties. Both native parties considered this to be a prudent course of action. The detailed critiques of the 1980 Annual Report, which the Cree and Inuit submitted to the Standing Committee, will be considered in the preparation of the next Report.

c) Appropriations

The payment of compensation funds is approved each year by Parliament pursuant to the statutory authority contained in Section 9 of the James Bay and Northern Quebec Native Claims Settlement Act. There is no other statutory authority for the appropriation of funds required to fulfill Canada's obligations in the Agreement. Program and capital funds required for programs or services to the Cree are considered as part of general appropriations obtained by the various departments, and are subject to the same cutbacks or improvements applied to other general appropriations. This manner of dealing with appropriations is a result of the fact that the rights provided by the Agreement are difficult to quantify with any precision.

There is a possibility, however, of setting aside Agreement funding as a specific vote within the general appropriations. This would give recognition to the special nature of these expenditures, and would make it clearly evident how much was being expended by Canada to fulfill specific provisions of the Agreement. It remains to be determined if such a separate vote would be technically feasible within the current system of budgetary appropriations.

D. Summary/Comments

Lack of proper mechanisms, structures and attitudes regarding implementation has been a major impediment to the smooth and efficient implementation of the Agreement. The establishment of more effective systems for implementation can do a great deal to prevent the build up of the type of conflict and tensions which, in recent years, have consumed time and resources that could be used much more productively in achieving the aims and objectives of the Agreement. No mechanisms, however, will make the Agreement work well unless all parties contribute their best efforts.

5.4 Other Issues

There are other issues of particular concern to the Inuit, but which were beyond the terms of the review, and consequently are not discussed above.

a) Extinguishment of Title

The Inuit believe that it was not necessary to "extinguish" aboriginal title in order to achieve the aims of the James Bay Agreement. They claim that extinguishment is "abhorent to native peoples and inherently unacceptable to them".

In discussing this issue with the Inuit, the review team, while recognizing its importance to them, suggested that it might be more appropriately and effectively dealt with within the context of the current discussions on the constitution and Canada's native peoples. The Inuit agreed with this point of view, and the review team undertook to make sure that this issue was brought to the attention of those responsible for the constitutional discussions.

b) Inuit Political Representation

The question of political representation, specifically the creation of a Federal Inuit constituency, was also discussed. It was agreed that the matter could be more effectively dealt with on the political or constitutional level.

c) Offshore Islands

The Inuit also expressed concern with the delay in resolving the issue of Inuit claims to the Offshore Islands. These islands, although located in the Northwest Territories, have been traditionally used by the Inuit of Northern Quebec and Canada agreed in 1975 to enter into negotiations with the Northern Quebec Inuit to settle their claims to these islands. For various reasons these negotiations have not yet been concluded.

The Inuit expressed particular concern with the position maintained by Canada that negotiations on this matter should be restricted to dealing with the islands themselves and not the offshore waters. They noted that these offshore waters are traditional Inuit hunting areas with regard to which the Inuit still, in their view, have unextinguished aboriginal rights.

The Inuit have now indicated that they are prepared to resume negotiations as soon as possible and DIAND is also prepared to do so. The Inuit have submitted a request for funding to carry on negotiations and this request is currently under consideration by the Department.

6. CONCLUSION/SUMMARY

On November 11, 1975, when the James Bay Agreement was signed, the Crees and Inuit, Canada and Quebec, had high expectations that the Agreement would enable the Inuit and Cree people of James Bay and Northern Quebec to advance and prosper as full participants in the social and economic life of Quebec and Canada while still preserving their traditional culture and lifestyles. Now, over six years after the signing, it is clear that many of these expectations have not been met.

Perhaps one of the most troubling aspects of this whole issue is the sense of frustration evidenced by ordinary Crees and Inuit in the communities. In 1975, these people firmly believed that the Agreement would result in a better, more secure, and prosperous future for them and their children. Despite the fact that significant progress has been made under the Agreement, change has come much more slowly than was anticipated.

There are a number of reasons for the difficulties that have arisen: the parties understood that the agreement needed to be fleshed out through day-to-day interaction; the natural expectations of all parties upon which the Agreement was built were dashed owing to changed economic circumstances; some expectations were based on the negotiating positions adopted by the parties rather than the final provisions of the Agreement; and the wording of the Agreement itself sometimes directly caused confusion.

The Report has noted possible new initiatives respecting programs, cooperative ventures, and implementation mechanisms. None of these initiatives will, however, go very far in dealing with the real problems of the Crees and Inuit, unless the parties to the Agreement jointly use their best efforts to make the Agreement work. A special effort is necessary because, while the Crees and Inuit have their rights as Indians and Inuit of Canada and Quebec, and rights as citizens of Canada and Quebec, the success of the Agreement is of fundamental importance to their future. It is therefore important that the parties to the Agreement, having regard to the difficulties and mistakes of the past and to the spirit and importance of the Agreement, and building on achievements already made, work together to breathe new life into the Agreement. It is in this hope that this Report has been prepared.

In conducting the review the review team found evidence of precisely that will on the part of the Crees, the Inuit, and the government representatives responsible for making the Agreement work. The review team believes that this Report will reinforce that will and thereby the spirit of the Agreement itself.

On the basis of the findings and conclusions of this Report, recommendations on measures to be taken to ensure that Canada's obligations under the Agreement are fully implemented now, and in the future, will be prepared for consideration by Cabinet.

APPENDIX 1

EXPENDITURES OF THE GOVERNMENT OF CANADA IN THE JAMES BAY AND NORTHERN QUEBEC TERRITORY - 1975-76 -- 1980-81

PRELIMINARY NOTES

1. The expenditures listed in the following tables include all expenditures on programs, services, and benefits directed to the Cree and Inuit of James Bay and Northern Quebec. Some of the expenditures are a direct result of the Agreement while others reflect Canada's ongoing responsibilities and obligations.

2. The purpose of these tables is to illustrate the magnitude and objects of Federal Government expenditures in James Bay and Northern Quebec since the signing of the Agreement.

3. The total Federal expenditures include Canada's proportion of compensation funds paid to date. It should be noted that the Agreement places restrictions on the management and use of these funds.

TABLE 1

TOTAL EXPENDITURES: SUMMARY
1975/76 - 1980/81

DEPARTMENT	AMOUNT
1. Solicitor General	43 403
2. Justice	Not applicable
3. Employment and Immigration	5 270 020
4. Health and Welfare	9 146 845
5. Environment Canada	1 724 100
6. Transport Canada	454 000
7. Secretary of State	Not available
8. Regional Economic Expansion	Not applicable
9. Indian and Northern Affairs	138 280 300
TOTAL	154 918 668
Compensation funds paid by the Federal Government to March 31, 1981	23 000 000
GRAND TOTAL	177 918 668

TABLE 2

TOTAL EXPENDITURES - DETAILS

No.	DEPARTMENT	PROJECT/ACTIVITY		OBSERVATIONS	FEDERAL EXPENSES
1.0	Sollicitor General	"Community Service Orders Project for Inuit and Indian Communities North of the 50th Parallel"		Project financed 50% by Quebec and 50% by Canada	43 403 (to June 1982)
2.0	Justice	None to date			N.A.
3.0	Canada Employment and Immigration Commission	Cree			
		- Manpower Service (Outreach)	525 667		
		- Job Creation (1978-81)	2 571 869		
		- Vocational Training (1978-81)	236 418		
		Sub-Total	3 333 954		
		Inuit			
		- Vocational Training (1978-81)	615 715		
		. In negotiation	40 900		
		. PFIMC	96 808		
		- Job Creation (1978-81)	1 182 643		
		- Manpower Services	260,885		
		Sub-Total	2 196 951		
		TOTAL	5 530 905		5 530 905

No.	DEPARTMENT	PROJECT/ACTIVITY	OBSERVATIONS	FEDERAL EXPENSES
4.0	Health and Welfare Canada	Health Services	Cumulative Annual Budgets (salaries, operation, capital) for the period to 31/3/81)	9 051 845
5.0	Environment Canada	JBNQ Office	Cumulative Annual expenses (annex 2) from 1977/78 - 1980-81. The budget for 1981-82 is 448,100	1 055 700
		Remuneration and Representatives' fees	Federal participants to the two consultative committees from 1977/78 - 1981-82 (4 years): 50 000	50 000
		HUNTING AND FISHING		
		- Research on native harvesting	Canada spent 1/4 ($200 000) of the total cost since 1976 and $52,400 before the signature of the JBNQA	252 400
		- Research on the eider of Ungava and the loon; and a special information program to natives	Financed by the Canadian Wildlife Service (Environment)	150 000

No.	DEPARTMENT	PROJECT/ACTIVITY	OBSERVATIONS	FEDERAL EXPENSES
5.0 (Cont'd)		- Research on the beluga of New-Québec	Fisheries and Oceans 60 000 DIAND & Supply and Services 156 000 216 000	216 000
			TOTAL	1 724 100
6.0	Transport Canada	Expenditures of Transport Canada in Northern Quebec since the signing of the Agreement	From 1975/76 - 1980/81; purchase and transfer of heavy equipment and construction of landstrip	454 000
7.0	Secretary of State	- Friendship Centers - Political organizations (CORE) - Communications (Inuit)	Information not available	
8.0	Regional Economic Expansion	- No projects to date		
9.0	Indian and Northern Affairs	Capital and O & M	Cumulative expenses 1975/76 - 1980/81 (re: Annex 4)	138 280 300
			TOTAL; 1975/76 - 1980/81	154 918 668

No.	DEPARTMENT	PROJECT/ACTIVITY	OBSERVATIONS	FEDERAL EXPENSES
10.0	Compensation Funds	Paid by Canada to date	(Re: Annex 5)	23 000 000

a) Total Federal programs and services	154 918 668
b) Total including compensation funds	177 918 668

TABLE 3

EXPENDITURES - HEALTH AND WELFARE CANADA

HEALTH SERVICES (Salary, Operation, Capital) by Community and by Year - SUMMARY

CREE	EASTMAIN	FORT GEORGES	MISTASSINI	PAINT HILL	RUPERT HOUSE	WASWANIPI	POSTE DE LA BALEINE
1975-76	923	59 019	202 012	108 365	175 365	-	266 820
1976-77	4 125	76 205	213 409	126 657	145 042	45 160	256 915
1977-78	595	7 661	192 043	145 765	185 282	50 710	102 018
1978-79	-	-	168 076	185 491	231 936	88 011	280 317
1979-80	-	-	272 008	2 065	732	62 776	311 369
1980-81	-	-	336 505	-	-	146 032	146 937
SUB-TOTAL	5 643	142 885	1 384 053	568 343	738 357	392 689	1 364 376

TOTAL: 4 596 346

(Data: Health and Welfare Canada, Regional Comptroller, Medical Services)

HEALTH SERVICES (Salary, Operation, Capital) by Community and by Year - SUMMARY

INUIT	AKULARIK	INOUCDJOUAC	POVUNGNITUK	SUGLUK
1975-76		201 757	295 053	266 636
1976-77		188 380	228 496	209 608
1977-78		207 747	378 486	229 906
1978-79		232 752	451 435	307 194
1979-80		349 075		301 993
1980-81	31 112	196 189	264 799	207 881
SUB-TOTAL	31 112	1 375 900	1 618 269	1 523 218

TOTAL: 4 550 499

(Data - Health and Welfare Canada, Regional Comptroller, Medical Services)

Sub-Total Cree	$4 596 346
Sub-Total Inuit	4 550 499
GRAND TOTAL	$9 146 845

TABLE 4

EXPENDITURES - ENVIRONMENT CANADA

EXPENSES OF ENVIRONMENT CANADA PURSUANT TO THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

1. Office of the James Bay and Northern Quebec: Annual Expenditures

FISCAL YEAR	OPERATIONS*	CONTRIBUTIONS**	TOTAL
1977-78	98.2	--	98.2
1978-79	277.7	13.3	291.0
1979-80	305.6	17.8	323.2
1980-81	313.2	30.0	343.2
TOTAL	994.7	61.1	1 055.6

(Note: * Includes salary and capital expenditures. Note that the capital expenditures are practically nil since 1980 because the office completed the purchase of furniture and equipment in that year.

** Contributions to the Secretariat of the James Bay Advisory Committee on the Environment (which also functions as the Evaluation Committee) and the Kitivik Advisory Committee on the Environment.

2. Federal representatives on both advisory committees

FISCAL YEAR	PAYMENT AND EXPENSES OF REPRESENTATIVES
1977-78	5 000*
1978-79	15 000
1979-80	15 000
1980-81	15 000
TOTAL	50 000

(*The first year only one committee was in operation.)

3. Research Project on Natives' Harvesting - Hunting and Fishing

- Federal Contribution to the study has been one quarter of the entire cost	200 000	
- Contributions prior the signing of the Agreement	52 400	
- Federal contribution - Total	252 400	252 400

- Allotment of the contribution by the:

   1. Canadian Wildlife Services (Environment Canada)
   2. Fisheries and Oceans

4. Study on the eider (Ungava) and the loon, with an information program to the natives

- Financed by the Canadian Wildlife Services	150 000	150 000

5. Research on the beluga in New-Québec

- Financed by:	Fisheries and Oceans	60 000	
	DIAND and Supply and Services Canada	156 000	
TOTAL		216 000	216 000

TOTAL OF CONTRIBUTION BY/VIA ENVIRONMENT CANADA	1 724 100

TABLE 5

EXPENDITURES - TRANSPORT CANADA
1974/75 - 1980/81

EXPENDITURES IN NEW-QUEBEC BY TRANSPORT RESULTING FROM THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT
1975/76 - 1980/81

FISCAL YEAR	LOCALITY	ACTIVITIES/PROJECT	EXPENSES
1975-76	General the construction of airstrips	Purchase of heavy equipment for	206 000
1976-77	General equipment from the Artic Program (Belchers Island)	Transfer of heavy construction	200 000*
1977-78	Povungnituk equipment	Transport of heavy construction	5 400
1978-79	Ivujuvik equipment	Transport of heavy construction	33 000
1979-80	Ivujuvik	Construction of a new airstrip	10 000

TOTAL: 454 000

(Note: The costs of the O&M for the maintenance of the heavy construction equipment are excluded.)

*This amount represents the book value of the equipment

TABLE 6

EXPENDITURES - INDIAN AND NORTHERN AFFAIRS 1975/76 - 1980/81

6A. Summary - Indian and Northern Affairs, 1975/76 -1980/81

6B. CREE - Capital, 1975/76 - 1980/81

6C. INUIT, Capital, 1975/76 - 1980/81

6D. CREE, Operations and Maintenance, 1975/76 - 1980/81

6E. INUIT, Operations and Maintenance, 1975/76 - 1980/81

6F. CREE, Economic Development, 1975/76 - 1980/81

TABLE 6A

SUMMARY: EXPENDITURES OF INDIAN AND NORTHERN AFFAIRS FROM 1975/76 - 1980/81

ACTIVITY	ITEM	CREE	INUIT	TOTAL
Capital	- Housing and Infrastructure	26 419 800	11 936 900	38 356 700
	- Education	6 921 100	2 382 700	9 303 800
	TOTAL	33 340 900	14 319 600	47 660 500
Operations and Maintenance	- Municipal Services	2 969 200	22 829 600	25 798 800
	- Core Funding	1 111 100	1 966 900	3 078 000
	- Administration	1 089 700		1 089 700
	- Social Services	2 267 500		2 267 500
	- Education	30 980 000	13 864 000	44 844 000
	- Economic Development	759 900	781 925	1 541 825
	TOTAL	39 182 900	39 442 425	78 625 300
	Estimate of O&M for 1975/76 - 1980/81*	12 000 000		12 000 000
	TOTAL	51 182 900	38 660 500	90 625 300

CAPITAL:	47 660 500
O & M:	90 619 500
TOTAL	$138 280 300

* Except in the area of Economic Development, the Cree O&M expenditures noted above do not include the years 1975/76 and 1976/77. Until 1977/78 O&M expenditures in the Cree communities were included in the total Abitibi District budget. It is therefore not possible to determine the precise O&M expenditures during those years. The estimated O&M expenditure 1975/76 - 1976/77 is $12,000,000.

TABLE 6B

CAPITAL - CREE

YEAR	HOUSING	INFRASTRUCTURE	TOTAL	REGIONAL BUDGET	%	EDUCATION	REGIONAL BUDGET	%	REGIONAL POPULATION	CREE POPULATION	%
1975-76	811.4	1 413.2	2 224.6	10 038.3	22.16				33 150	6 460	19.49
1976-77	1 033.9	2 260.2	3 294.1	9 466.6	33.74	205.0	3 319.3	6.2	33 774	6 625	19.62
1977-78	1 052.0	1 270.4	2 322.4	13 294.6	17.47	449.3	2 544.4	17.66	34 750	6 870	19.77
1978-79	851.2	7 334.7(1)	8 185.9	17 815.5	45.95	1 373.1(3)	2 995.3	45.95	35 400	7 017	19.8
1979-80	1 354.0	5 786.0(2)	7 140.0	16 997.7	40.95	2 700.0	4 082.9	66.13	36 320	7 215	19.86
1980-81	716.9	2 535.9(5)	3 252.8	17 217.4	17.51	2 193.7	4 788.8	45.81	37 396	7 416	19.83(4)
TOTAL			$26 419.8			$6 921.1					

CAPITAL HOUSING & INFRA.:	$26 419 800
CAPITAL EDUCATION:	6 921 100
TOTAL	$33,340,900

N.B.: - All the amounts are in thousand dollars.

(1): - Including $5,346,000 for the relocation of Fort George.
(2): - Beginning of Cree Housing Corporation. This amount also includes $4 654 000 for the relocation of Fort George.
(3): - Since 1978/79 Canada pays 75% of Education costs.
(4): - Estimates.
(5): - This amount includes a remedial measures expenditure of $238,000.

TABLE 6C

CRIS - O & M

YEAR	MUNICIPAL SERVICES	CORE FUNDING	ADMINISTRATION	SOCIAL SERVICES (including social assistance, care to children and adults, contracts with S.S.C.	EDUCATION	TOTAL O & M CREES - PER YEAR
1977-78	414.4	245.9	289.1	442.4	5 626.1(3)	7 026.9
1978-79	300.1	258.7	302.2	570.9	7 805.4(4)	9 237.1
1979-80	835.7	297.2	237.0(2)	584.4	8 176.8(4)	10 131.1
1980-81	1 419.0(1)	300.3	261.4	669.9	9 371.9(5)	12 022.4
TOTAL	2 969.2	1 111.1	1 089.7	2 267.5	30 980.0	38 417.5(6)

N.B.: - All the amounts are in thousand dollars.

(1): - This includes $305,300 for 61 residents of Great Whale River in 1980/81 under the terms of Northern Rental Housing Program.

(2): - The drop since 1979/80 is explained by several factors: the creation of the Cree School Board has reduced general administration costs, the creation of the Cree Housing Corporation to whom Canada transfers $100,000 per year for administration, and the completion of the Fort George relocation project.

(3): - In 1977/78, Canada paid 100% of the Cree education costs.

(4): - Since 1978/79, Canada pays 75% of the costs. These amounts do not include our possible participation in covering the operations' deficit incurred by the Cree School Board.

(5): - The Quebec's Department of Education has proposed a budget of $15 600 000 for 1980/81. If this budget is approved Canada's contribution will be $11 700 000 (75%).

(6) - This amount does not include economic development.

TABLE 6D

CAPITAL - INUIT

YEAR	HOUSING	INFRASTRUCTURE	TOTAL	REGIONAL BUDGET	%	EDUCATION	REGIONAL BUDGET	%	REGIONAL POPULATION	INUIT POPULATION	%
1975-76	1 152.2	976.6	2 128.8	10 038.3	21.2				33 150	4 136	12.48
1976-77	844.0	1 005.8	1 849.8	9 466.6	19.54	163.9	3 319.3	4.94	33 774	4 194	12.42
1977-78	1 540.0	1 135.3	2 675.3	13 294.6	20.12	195.7	2 544.4	7.69	34 750	4 575	13.17(2)
1978-79	1 330.7	1 088.1	2 418.8	17 815.5	14.23	344.3(1)	2 995.3	11.49	35 440	4 717	13.3
1979-80	2 018.1	846.1	2 864.2	16 997.7	16.85	632.3	4 082.9	15.49	36 320	4 832	13.3
1980-81(3)	—	—	—	—	—	1 046.5	4 788.8	21.85	37 396	4 958	13.26
TOTAL			11 936.9			2 382.7					

N.B.: - All the amounts are in thousand dollars

(1): - Since 1978/79 Canada pays 25% of the costs.
(2): - The percentage seems to raise at the time of beneficiaries' inscription
(3): - In 1980/81 responsibility for housing and municipal services was transferred to Quebec pursuant to the Northern Quebec Transfer Agreement (February 13, 1981). Canada is obligated to pay Quebec $8 million a year for 9 years or a total of $72 million. In addition, $30.2 million in capital assets were transferred to Quebec pursuant to the Agreement.

CAPITAL, HOUSING & INFRA:	11,936,900
CAPITAL EDUCATION:	2,382,700
TOTAL	$14,319,600
SUMMARY CREE AND INUIT	
CAPITAL - CREE:	33,340,900
CAPITAL - INUIT:	14,319,600
TOTAL	$47,660,500

TABLE 6E

INUIT - O & M

YEAR	MUNICIPAL SERVICES (including administration)(1)	CORE FUNDING	SOCIAL SERVICES(2)	EDUCATION	TOTAL O & M -
1975-76	3 759.6	338.9	—	1 684.3	5 782.8
1976-77	4 217.2	353.3	—	2 086.4	6 656.9
1977-78	4 190.5	429.1	—	2 274.3	6 893.3
1978-79	5 261.4	425.4	—	2 830.4(4)	8 517.2
1979-80	5 400.9	420.2	—	2 405.3(5)	8 226.4
1980-81(3)	—	— (7)	—	2 619.3(6)	2 619.3(8)
TOTAL	22 829.6	1 966.9	—	13 864.0	38 660.5

N.B.: - All the amounts are in thousand dollars.

O & M CREE: 38 417 500
O & M INUIT: 38 660 500
TOTAL $77 078 000(9)

(1): - For the Inuit, the administration costs are included in the social services contracts which also include heating, electricity and housing maintenance (H.H.R.P.).

(2): - Social services, including the social assistance, are financed and paid by Québec.

(3): - Responsibility transferred to Quebec pursuant to the Northern Quebec Transfer Agreement (February 13, 1981).

(4): - As of 1978/79 Canada pays 25% of education costs.

(5): - Expenditures for 1979/80 and 1978/79 do not include our possible participation to the deficit incurred by the Kativik School Board.

(6): - The Quebec's Department of Education is ready to approve a budget of about $12 180 000. Canada's share would then be $3 045 000 (25%).

(7) - This program ceased in 1980/81, with the establishment of northern villages municipalities which are financed by the Quebec's Department of Municipal Affairs

(8) - Estimates.

(9) - This amount does not include the economic development.

TABLE 6F

ECONOMIC DEVELOPMENT

EXPENSES INCURRED - CREES

ACTIVITY	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81
WILDLIFE (Trapping)						
Cree Trappers Association						
- Communications					75.0	
- Feasibility Study			20.0			
- Miscellaneous - Meetings			9.0		1.0	
- Administration - Operation						40.0
OUTFITTING						
Camps	30.0	30.6	29.0			
Instructors, cooks, guides	6.4	4.8		16.0	8.7	7.2
Counsel						
Capital - Outfitting	9.9	45.0				
ARTS AND CRAFTS						
Contribution - Construction - Equipment						
Functions					50.5	53.2
Study (C. Lévesque)			1.5	5.0		
Course (Val d'Or)				1.5		
TOTAL	46.3	80.4	59.5	22.5	135.2	100.4
					CUMULATIVE TOTAL:	$444 300

TABLE 6F (Continued)

EXPENSES INCURRED - CREES

ACTIVITY	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81
Canadian Executive Servicè (C.E.S.O.)						
- Volunteers on projects*	(3) 12.2	(3) 12.6	(6) 18.1	(8) 24.5	(12) 35.5	(16) 56.3
- Students	(4) 14.8	(6) 20.0	(6) 21.1	(8) 28.6	(16) 43.7	(16) 28.2
TOTAL	(7) 27.0	(9) 32.6	(12) 39.2	(16) 53.1	(28) 79.2	(32) 84.5

CUMULATIVE TOTAL: $315 600

* Numbers in bracket indicate the number of volunteers and students.

For the past three years, the funds expended by the Crees represent about 1/3 of the region's budget on C.E.S.O. activity.

SUMMARY - CREE:

Associations:	$444 300
C.E.S.O.:	315 600
TOTAL	$759 900

TABLE 6F (Continued)

ECONOMIC DEVELOPMENT

* EXPENSES PAID FOR THE INUIT

FISCAL YEAR	EXPENSES
1975-76	107 510
1976-77	353 817
1977-78	30 520
1978-79	44 577
1979-80	104 268
1980-81	141 925
	$781,925

(Note: Most of these expenses are contributions to enterprises (tourist camps). For 1980-81, the amount also includes a contribution to a feasibility study and a capital expenditures totalling $92,500).

SUMMARY

Economic Development - Cree:	759 900
Economic Development - Inuit:	781 925
TOTAL	$1 541 825

TABLE 7

EXPENDITURES - COMPENSATION FUNDS

COMPENSATION FUNDS: SUMMARY
(*M: Million)

PORTION	AMOUNT	PROPORTIONS	PERIOD	SOURCE
A	$150M	$75M	10 Years	Canada: $32,75M Québec: $42,25M
		$75M	21 Years	Hydro-Québec's royalties
B	$ 75M		5 Years	Québec's debentures
C	$ 4M		10 Years	Canada)) same proportion as in A Québec)
D	$ 2.5M			Québec: Cost of negotiations
TOTAL:	$232.5M -	Allotment:	Canada: 15% Québec: 85%	$ 34M $198.5M
		Allotted:	Crees: 60% Inuit: 50%	

(Note: Two-thirds of the Compensation Funds here have been paid to date ($155M) by both governments of this amount Canada paid 15% (23M).